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**INYUVESI
YAKWAZULU-NATALI**

**SUGAR-SWEETENED BEVERAGE (SSB) TAX IN SOUTH
AFRICA: AN ANALYSIS OF THE TAX DESIGN**

By

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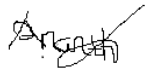
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DECLARATION

I, Orushka Ananth hereby, declare that the work on which this dissertation is based on is my original work (except where acknowledgments indicate otherwise) and that neither the whole work nor part of it has been, is being, or is to be submitted for another degree in this or any other university. It is hereby presented in partial fulfillment of the requirements for the award of Master of Laws in Taxation.

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ABSTRACT

Sugar-Sweetened Beverage (SSB) tax has stirred considerable debate both locally and internationally in the recent years and this dissertation explores some of these issues. The tax was announced in South Africa by former Minister of Finance Pravin Gordhan in the February 2016 Budget as a measure to reduce the prevalence of obesity, non-communicable diseases (NCDs) and excess sugar consumption. The tax was initially set at a rate of 20% and due to backlash from members of the beverage industry, the tax rate was reduced to 11%; and a tax threshold was set exempting the first 4 grams of 100ml of sugar contained in SSBs. Therefore, many soda companies have embarked on reformulation of their products to reduce the added sugar content levels contained in their beverages; in order for them to be classified as ‘tax-exempt’. The opposition from the beverage industry stems from the potential job losses that the proposed tax may create. The tax is analysed as a form of ‘sin tax’ and the Policy Paper indicates a vast array of similarities to the objectives, structure and design of the excise taxes on alcohol and tobacco. International studies on the effect of SSB tax have indicated a positive correlation leading to the reduction of SSB sales and consumption; (Mexico and Berkeley, California); which in turn leads to a reduction in the prevalence of obesity and other NCDs. France indicated a reduction of sales in the non-alcoholic beverage sector and the SSB tax design in the United Kingdom has many similarities to the proposed tax design in South Africa. The principles of an effective fiscal health policy and tax design suggested by the Davis Tax Committee and the World Health Organisation (WHO) indicate that South Africa’s tax design will be effective in order to achieve the fiscal health objectives. The alternatives to SSB tax suggested by members of the beverage industry include; reformulation of SSBs, food labeling, and consumer education. Ultimately, SSB tax should be implemented together with a comprehensive package of policies in order to achieve the fiscal health objectives and to mitigate against potential job losses.

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CHAPTER ONE

1.1 Introduction

This dissertation seeks to analyse the proposed SSB tax that will be implemented in South Africa in April 2018. The proposed tax was initially set at a rate of 2.29 cents by Treasury; and then reduced to 2.1 cents per gram of sugar of all beverages that exceed 4 grams of sugar per 100ml of SSB. The tax is a response to the increasing obesity and other non-communicable diseases (NCDs) rates in South Africa. The tax was proposed due to the concern of the global and national obesity epidemic; as obesity has been linked to other NCDs such as diabetes. South Africa is currently the most obese nation in Africa and in the year 2013, 13.5% of men and 42% of women above the age of 20 years old had a Body Mass Index (BMI) of more than or equal to 30 kg/m², which indicates obesity. According to the South African National Department of Health, NCDs are responsible for 40% of all deaths within the country. Furthermore, South Africa is ranked number eight globally for sugar consumption; and such an alarming statistic affects the poor more than the middle or upper class as many South Africans live below the poverty line¹. The inadequate health infrastructure and services create a ‘poverty spiral’ as many people cannot afford to have access to quality health care services; and often live with undiagnosed NCDs which then lead to premature death. As a result the workforce capacity is diminished due to absenteeism, disability, and death; which increase the link between inequality and poverty² in South Africa today.

The design of SSB tax will be compared with other international jurisdictions that have already implemented the tax. These countries are the United Kingdom (UK), Mexico, France and the city of Berkeley (California, the United States of America). The reason for the comparison is to derive mechanisms and tools which have proven to be successful within

¹ A person living with poverty earns about R992 on a monthly basis (2015 statistic), ‘Poverty on the rise in South Africa’ (22 August 2017), *Statistics South Africa*, available at <https://goo.gl/LPEmHt>, last accessed 5 November 2017. Despite an endeavor to obtain 2016-17 statistics, all attempts were unsuccessful. Since South Africa is a third world country and SSB tax is compared to SSB tax in international jurisdictions, it is important to define the concept of ‘poverty’ as ‘poverty-stricken conditions’ in third and first world countries differ.

² Myers A, Fig D, Tugendhaft A, Mandle J, Myers J & Hofman K ‘Sugar and health in South Africa: Potential challenges to leveraging policy change’ (2017), *Global Public Health*, 12:1, available at <https://goo.gl/SGct4t>, last accessed 26 October 2017.

each of the respective jurisdictions; and to adopt and implement them in the SSB tax design soon to be implemented in South Africa.

The Policy Paper³ by Treasury in South Africa was not as in-depth as the Finance Bill, now the Finance Act 2017⁴ (chapter 10) of South Africa's counterpart, the United Kingdom. South Africa's policy paper of the taxation of SSBs contains many gaps when compared to the UK's tax design of SSBs; one gap is the 'small producer exemption', which the Policy Paper by Treasury in South Africa does not provide for. Furthermore, there is no provision which outlines an exemption for small producers in the Rates and Monetary Amounts and Amendment of Revenue Laws Bill⁵; and as such the provision of a tax exemption to small producers' in the industry remains unclear. It is uncertain whether lawmakers will amend the Bill mentioned above in South Africa to include the 'small producer' exemption. The online article entitled 'UK tax Bill shows there's no need for a sugar rush'⁶ differentiates between the UK Draft Finance Bill⁷ and the South African proposed fiscal policy; and the authors' indicate disparities between the two tax designs. This is indicative of the gaps that currently exist within Treasury's proposed tax policy which need to be addressed.

Policy papers and responses by different role players from the beverage industry; including Coca-Cola⁸, the Beverage Association of South Africa⁹, Little Green Beverages¹⁰ and Softbev¹¹; reveal their concerns regarding the effect that the proposed SSB tax will have on potential job losses within the beverage industry and the instability SSB tax could cause to

³ 'Taxation of Sugar-Sweetened Beverages' Policy Paper - Economics Tax Analysis Chief Directorate (8 July 2016), *The Department of National Treasury*, available at <https://goo.gl/VzdNvj>, last accessed 11 November 2017.

⁴ The Finance Act 2017 (Chapter 10), section 25-49, available at <https://goo.gl/7g2PCH>, last accessed 11 November 2017.

⁵ Rates and Monetary Amounts and Amendment of Revenue Laws Bill – Part III of Schedule No.1/Part 7/Section A – Health Promotion Levy on Sugary Beverages, (B26-2017), 22-24, available at <https://goo.gl/8YzBQN>, last accessed 30 November 2017. Hereinafter referred to as the 'Rates and Monetary Amounts Bill'.

⁶ Subban V & Sher Y 'UK tax bill shows there's no need for a sugar rush' (6 January 2017), *The Global Legal Post*, available at <https://goo.gl/aK5vVU>, last accessed 14 September 2017.

⁷ Now the Finance Act 2017 (Chapter 10).

⁸ 'Response to taxation of sugar-sweetened beverage policy paper' (2016), *Coca-Cola South Africa*, available at <https://goo.gl/AmJj9D>, last accessed 4 October 2017.

⁹ 'Response to taxation of sugar-sweetened beverages – policy paper' (2016), *The Beverage Association of South Africa*, available at <https://goo.gl/KDyj9k>, last accessed 4 October 2017.

¹⁰ 'Little Green Beverages (Proprietary) Limited submission on impact of proposed taxation of sugar sweetened beverages' (2016), *Little Green Beverages (Pty) Ltd*, available at <https://goo.gl/BEN4WB>, last accessed 9 October 2017.

¹¹ 'Policy Paper: Taxation of Sugar Sweetened Beverages' (2016), *SoftBev*, available at <https://goo.gl/wUpJIS>, last accessed 9 October 2017.

the economy. The industry suggests alternative measures to the proposed tax; such as the reformulation and reduced package sizes of SSBs. In the research article named ‘Decreasing the Burden of Type 2 Diabetes in South Africa: The Impact of Taxing Sugar-Sweetened Beverages’¹² statistical information proves that the fiscal policy has the potential to reduce the burden of type 2 diabetes and successfully accomplish the government’s health goals to reduce the prevalence of obesity and other NCDs in South Africa. In a study entitled ‘The Potential Impact of a 20% Tax on Sugar-Sweetened Beverages on Obesity in South African Adults: A Mathematical Model’¹³, a study was conducted which indicates that a 20% tax could have a positive impact to reduce the prevalence of obesity in South Africa.

The journal article entitled ‘Putting taxes into the diet question’¹⁴ evidence indicates a decrease in consumer purchase and consumption of SSBs in Mexico. The journal article entitled ‘Beverages Sales in Mexico before and after Implementation of a Sugar Sweetened Beverage Tax’¹⁵ analyses the consequences of SSB tax and the results indicate a positive outcome; as the sales of plain water increased post implementation of SSB tax. In the case study entitled ‘Case study: taxing sweetened drinks in France’¹⁶ indicates a reduction of sales in the non-alcoholic beverage sector. The analysis of SSB tax in France includes a comparison of two other studies, these are; ‘The Impact of ‘Soda Taxes’ on Prices. Evidence from French Micro Data’¹⁷ and ‘The impact of the French soda tax on prices, purchases and tastes: an ex post evaluation’¹⁸. Both of these studies compare different data but the same overall effect was found; SSB sales were reduced due to the increase in price of the product being fully passed through to sodas. The journal article entitled ‘Impact of the Berkeley

¹² Manyema M, Veerman JL, Chola L, Tugendhaft A, Labadarios D, Hofman K ‘Decreasing the Burden of Type 2 Diabetes in South Africa: The Impact of Taxing Sugar-Sweetened Beverages’ (2015), *PLoS ONE* 10(11): e0143050, available at <https://goo.gl/e5YGjw>, last accessed 4 October 2017.

¹³ Manyema M, Veerman LJ, Chola L, Tugendhaft A, Sartorius B, A Tugendhaft, Labadarios D, Hofman KJ, ‘The Potential Impact of a 20% Tax on Sugar-Sweetened Beverages on Obesity in South African Adults: A Mathematical Model’ (2014) *PLOS ONE* 9(8): e105287, available at <https://goo.gl/kdn2Rx>, last accessed 4 October 2017.

¹⁴ Soares A ‘Putting taxes into the diet question’ (2016), *Bull World Health Organ*, 94, available at <https://goo.gl/Kvn8e7>, last accessed 14 September 2017.

¹⁵ Colchero MA, Guerrero-LoÁpez CM, Molina M, Rivera JA ‘Beverages Sales in Mexico before and after Implementation of a Sugar Sweetened Beverage Tax’ (2016), *PLoS ONE* 11(9): e0163463, available at <https://goo.gl/8Z7Fhq>, last accessed 11 September 2017.

¹⁶ ‘Case study: taxing sweetened drinks in France’ (22 July 2015), available at <https://goo.gl/9THfaV>, last accessed 15 September 2017.

¹⁷ Berardi N, Sevestre P, Tepaut M & Vignero A, ‘The impact of ‘Soda Taxes’ on Prices. Evidence from French Micro Data’ (December 2012 – working paper), *Banque de France*, available at <https://goo.gl/S927cS>, last accessed 15 September 2017.

¹⁸ Capacci S, Allais O, Bonnet C, & Mazzocchi M, ‘The impact of the French soda tax on prices, purchases and tastes: an ex post evaluation’ (2016), *Department of Economics, University of Bologna*, available at <https://goo.gl/pdtrTR>, last accessed 15 September 2017.

Excise Tax on Sugar-Sweetened Beverage Consumption’¹⁹ analyses the effect of SSB tax in Berkeley and results indicate a reduction in the consumption of SSBs and an increase in the consumption of water.

As mentioned above Treasury reduced the proposed rate of SSB tax from 20% to 11%, and the models used in the Manyema *et al* studies mentioned above were conducted based on a 20% tax. If the same assumption models and studies had to be conducted again based on the tax rate of 11%; the outcome of the study may differ significantly. A study conducted by Econex criticises and analyses the findings of the Manyema *et al* study²⁰. The figures used in the Manyema *et al* study were replaced, and accordingly, Econex²¹ found a higher decrease in the prevalence of obesity when a daily reduction of 76KJ was applied, instead of a 36KJ daily intake reduction as applied in the Manyema *et al* study. The Policy Paper by Treasury indicates the outcome that the implementation of SSB tax is likely to achieve, however the Policy Paper does not consider the likelihood of consumers’ not behaving according to the prediction of the assumption models²². The article entitled ‘Sugar taxes: a briefing’²³ considers various scenarios that could occur, if consumers’ behave differently than expected; such as the substitution of other unhealthy foods; which often contain higher calories than compared to the calorie intake of just one SSB. Furthermore, Treasury’s Policy Paper provides little to no insight on how SSB tax will be monitored and evaluated in order to track the results and monitor the effect post-implementation of SSB tax. The paper entitled ‘Strategic plan for the prevention and control of non-communicable diseases 2013-2017’²⁴ provides some guidelines on how the results may be monitored and indicates the importance of an effective surveillance system.

The above literature is a few of the resources used to analyse the research question and topic; in order to assess the potential success or failure of SSB tax in South Africa.

¹⁹ Fable J, Thompson HR, Becker CM, Rojas N, McCulloch CE & Madsen KA, ‘Impact of the Berkeley Excise Tax on Sugar-Sweetened Beverage Consumption’ (research and practice), *American Journal of Public Health*, available at <https://goo.gl/RhDEJ9>, last accessed 15 September 2017.

²⁰ Manyema M *et al* (note 13 above).

²¹ Dr Armstrong P (2016) ‘The impact of a sugar tax on SSBs on the prevalence of obesity’ (Research Note 41), *Econex – Competition and Applied Economics*, available at <https://goo.gl/7i3oNh>, last accessed 5 October 2017. The findings of this study are further discussed in Chapter 5.

²² Such as the assumption models used in the Manyema *et al* studies (note 11 and 12 above).

²³ Snowdon C ‘Sugar Taxes: a briefing’ (2016), *The Institute of Economics*, available at <https://goo.gl/NvHG9a>, last accessed 18 October 2017.

²⁴ ‘Strategic Plan for the Prevention and Control of Non-Communicable diseases 2013-17’ (2013), *The Human Sciences Research Council*, available at <https://goo.gl/h7Rh4d>, last accessed 25 October 2017.

1.2 Statement of purpose

The purpose of this study is to examine the tax design and policy behind the proposed SSB tax in South Africa as a mechanism to achieve a reduction in the prevalence of obesity and other NCDs. The tax design, approach and effectiveness of SSB tax will be compared with international jurisdictions who have adopted SSB tax. Furthermore, the design of the SSB tax will be analysed in relation to the design of ‘sin taxes’ implemented in South Africa to explore the potential success of SSB tax in South Africa as an indirect tax.

1.3 Rationale of study

This study is important as it provides an analysis behind the tax design of the proposed SSB tax; in order to assess the potential effectiveness of SSB tax in South Africa. Sugar-sweetened beverage tax will affect both the beverage industry and a large population of consumers’ in the country; therefore it is important that the possible positive and negative consequences that may arise be assessed. The overall goal of the fiscal health policy is to reduce the SSB consumption intake of consumers, as well as to generate additional revenue to fund health campaigns; in order to address the obesity epidemic within the country. Therefore, an analysis of this topic is important as it analyses the various socio-economic issues that will affect South Africa when SSB tax is implemented.

1.4 Main research questions

- a. Why has Parliament introduced the SSB tax and what is the benefit of such tax for South African citizens?
- b. Who is likely to be affected by the implementation of such tax; and why are some of these stakeholders adverse to the proposed implementation of SSB tax?
- c. What does the fiscus have to gain by the implementation of the SSB tax?

1.5 Sub-research questions

- a. What we can learn from the design of the so-called ‘sin taxes’?

- b. How has SSB tax been implemented in international jurisdictions and what are their experiences?
- c. Will the tax design by Treasury ultimately be effective to achieve Treasury's health objectives?

1.6 Methodology

A qualitative research method was used throughout this dissertation to analyse the tax design of the proposed SSB tax in South Africa. The proposed tax was then compared and contrasted to other international jurisdictions that have or are in the process of implementing a SSB tax. The tax design of SSB tax and 'sin tax' was analysed to explore the possible success of SSB tax as a form of 'sin tax'. An analysis of this topic was completed using a combination of sources such as; reputable web articles, online journal articles, various Draft Bills, government policy papers, research studies and articles. These resources were used in order to critically analyse the tax design; the implementation and the effect of SSB tax as well as the other so-called 'sin taxes', the opposition from the various role players involved in the beverage industry, and the health benefits to be derived as a result of the proposed SSB tax.

1.7 Limitations of the study

Sugar-sweetened beverage tax is a fairly new form of excise tax in South Africa, despite the earlier implementation of the tax. The tax at hand is a revised form, with very little comparative research conducted with the tax to be implemented in South Africa in April 2018. The Mexican and French Act legislating SSB tax was not publicly made available; therefore all references to these two jurisdictions are only secondary sources. The statistics collected are from reputable studies and findings conducted from secondary research remains limited due to the models used within the research based primarily on assumption theories; and once-off studies being carried out. The studies conducted in South Africa are based on assumption models and not real evidence and as a result the study is open to criticism. A few studies have been conducted within the international jurisdictions above; and have been studied over a short period. Therefore, it is difficult to model a realistic situation without some uncertainty; due to the short-term results of the studies conducted. Furthermore, very

little real evidence has been collected surrounding the implementation and the effect of SSB tax both locally and internationally; as the tax has not been studied for a long-period due to the recent implementation of the tax in these specific jurisdictions. Despite this fact, the research gathered was sufficient to begin an analysis around the relevance and application to the proposed SSB tax in South Africa. The research conducted on the proposed tax has been researched up until the 30 November 2017.

1.8 Underlying Assumptions

For the purposes of this dissertation it can be assumed that the consumer behaviour in South Africa in response to a newly implemented excise tax will not differ dramatically from the consumer behaviour analysed from studies conducted across first world countries.

1.9 Brief chapter overview

This dissertation is divided into several chapters. The first chapter deals with the background, rationale, purpose, research questions, limitations of the study; and key definitions that are used throughout the dissertation. Furthermore, the structure of the dissertation is set out.

The second chapter explores the South African context of the proposed implementation of SSB tax. The definition of SSB tax is considered and the scope, rationale, rate, administration and the objectives of the proposed tax are analysed. Furthermore, two Acts' are studied in relation to SSB tax; these are the Customs and Excise Act No. 91 of 1964 and the Foodstuffs, Cosmetics and Disinfections Act No.54 of 1972.

The third chapter explores the international context of SSB tax; the jurisdictions that were analyzed are the UK, Mexico, France and Berkeley. The origin, rate, scope, administration, effect and results of SSB tax is analyzed in relation of how these findings may influence South African lawmakers and fill any gaps in the proposed South African fiscal policy design on the taxation of SSBs.

Chapter four analyses the so-called 'sin taxes' in South Africa and discusses the characteristics of a 'sin tax' and applies these characteristics to the proposed SSB tax in order

to determine if SSB tax is a form of ‘sin tax’. The tobacco and alcohol excise taxes are analysed as the effect of these two taxes are used as a basis to determine; and estimate the likelihood of SSB tax having the same outcome over the years to come. The structure, administration, objectives, rationale and effect of alcohol and tobacco tax is analysed. Furthermore, the revenue generated from these two commodities is studied to estimate the potential revenue-generating aspect of SSB tax in South Africa.

Chapter five discusses the advantages and disadvantages of the proposed tax in South Africa. The medical advantages that are studied include; a reduction in the incidence of obesity, NCDs, and diabetes as well as the standing of the WHO; and the potential revenue-generating aspect of SSB tax for the fiscus. Two preliminary issues are dealt with before the disadvantages of SSB tax are considered; these are the reformulation of SSBs and the alternatives to the implementation of the proposed tax. The disadvantages include the reaction from the producers and members of the beverage industry, the potential loss of jobs due to the proposed implementation of the tax as well as the regressive nature of SSB tax. Essentially this chapter entails an analysis of the ‘good and the bad’ aspects of the proposed tax in South Africa and how each positive and negative consequence must be weighed against the other.

Chapter six explores the components of an effective excise tax policy design and fiscal tools used to create an effective tax policy. The concept of earmarking is discussed in relation to using the revenues generated from the proposed tax towards health care initiatives and the overall effectiveness of the proposed tax in South Africa is discussed in this chapter.

Chapter seven contains the conclusion to the dissertation and my own thoughts and opinion regarding the potential success or failure of SSB tax in South Africa. Furthermore, the need for further research to be conducted in South Africa and across international jurisdictions is discussed in light of the future of a ‘sugary sin tax’ in South Africa.

1.10 Definition of key terms used

1.10.1 Diabetes

Diabetes is a disease that is associated with the hormone called insulin. Once food is ingested into an individual's body, the food is converted into energy in the form of sugar or glucose. The body then releases the hormone insulin to transport this energy to the cells of the body, if an individual is insulin resistant or produces little or no insulin; the level of sugar remains in the blood therefore increasing the blood glucose level. The two main types of diabetes are classified as type 1 and type 2; type 1 diabetes is when the pancreas does not produce insulin and type 2 diabetes occurs when the body is unable to use insulin in the proper manner otherwise known as insulin resistance²⁵.

1.10.2 Non-communicable diseases (NCD)

Non-communicable diseases are diseases or medical conditions that are not transmittable and non-infectious among people. The four main types of NCDs are: “cardiovascular disease, cancer, chronic lung disease, and diabetes”²⁶.

1.10.3 Obesity

Obesity is defined as being grossly overweight and is caused by an abnormal accumulation of body fat of an individual. The individual will usually be overweight by 20% or more of their ideal body weight and this disease usually leads to other illnesses such as disability, diabetes and may even lead to death²⁷.

²⁵ ‘Diabetes: definition, causes and symptoms’, *Davita Kidney Care*, available at <https://goo.gl/C1MJh0>, last accessed 12 October 2017.

²⁶ Chang Kim H & Min Oh S ‘Noncommunicable diseases: current status of major modifiable risk factors in Korea’ (2013), 46(4), *Journal of Preventative Medicine and Public Health*, 165, available at <https://goo.gl/zXiAsA>, last accessed 9 October 2017.

²⁷ ‘Obesity’ *The Free Dictionary by Farlex*, available at <https://goo.gl/rBEA8>, last accessed 9 October 2017.

Table 1: **Abbreviations used in this document:**

Abbreviation	Meaning
BMI	Body Mass Index
NCD	Non-communicable disease
SSB	Sugar-sweetened beverage
VAT	Value Added Tax as defined by the Value Added Tax Act 89 of 1991.
WHO	World Health Organisation

CHAPTER TWO

2. The South African Context

2.1 Introduction

This chapter deals with SSB tax within the South African context and discusses the following; the nature, scope, rate and administration of the tax, the legislation within which the proposed tax will be implemented, the objectives to be achieved by the proposed tax as well as the origin and the history of SSB tax in South Africa. This is the starting point from which to analyse the proposed excise tax on sugar in South Africa and provides the framework around which the proposed tax is to be analysed.

2.2 What is SSB tax?

Sugar-sweetened beverages tax is an indirect tax levied by Treasury against the purchase of SSBs (namely soft drinks). This tax is similar to the imposition of alcohol and tobacco tax otherwise known as ‘*sin tax*’ in that it is aimed at curbing unhealthy lifestyle choices and influencing consumer purchases by imposing a tax levy.

According to the WHO SSBs are described as beverages that:

“Contain added sugars such as sucrose or high fructose corn syrup and a 330ml or 12oz portion of sugar-sweetened carbonated soft drink typically contains some 35g (almost nine teaspoons) of sugars and provides approximately 140 kcal of energy, generally with little other nutritional value”²⁸.

²⁸ ‘Taxing Sugar Sweetened Beverages: a comparative perspective’ (Research and Information Service Briefing Paper - Paper 135/15, (2015), *Northern Ireland Assembly*, 3 available at <https://goo.gl/1db4Lc>, last accessed 3 August 2017.

According to The British Medical Association (BMA) SSBs are defined as:

“All non-alcoholic water based beverages with added sugar, including sugar-sweetened soft drinks, energy drinks, fruit drink, sports drinks and fruit juice concentrates”²⁹.

The beverage industry broadens this category of SSBs to include the following:

“Carbonated drinks, still drinks, juice drinks, pure fruit juices and bottled waters (flavoured and unflavoured; carbonated and un-carbonated)”³⁰.

In South Africa, sugary beverages opposed to SSBs is defined in the Draft Amendment of the rules of the Customs and Excise Act No. 91 of 1964³¹; Chapter VB will thereby be inserted within the Act; and for the purposes of Chapter VB, sugary beverages are described as:

“Sugary beverages manufactured in or imported into the Republic in terms of item 191.00 in Section A of Part 7 of Schedule No. 1”³².

2.3 The origin and development of the SSB tax design in South Africa

In the February 2016 Budget Speech Former Minister of Finance Pravin Gordhan, stated that the government will embark on the implementation of a SSB tax in the following financial year. The Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Draft Bill) came into effect on the 22nd of February 2017, and the proposed tax was to be introduced and implemented on the 1st of April 2017 once legislation was finalized. However, due to Treasury engaging with further consultations and working closely with the Department of Health; there was some uncertainty regarding the date of the implementation and

²⁹ Note 28, 4.

³⁰ Note 29, 4.

³¹ Hereinafter referred to as the ‘Act’.

³² Customs and Excise Act, 1964, Draft Amendment of Rules (2017), SARS, Chapter VB (Health Promotion Levies), section 54I.01, (b)(vii), 2, available at <https://goo.gl/fLdaGN>, last accessed 30 November 2017. Item 191.00 is discussed in 2.4 below and SARS published the Draft Rules for comment by the 30 of November 2017. The rules have been drafted to take effect from the 1st of April 2018.

promulgation of the legislation³³. The Constitution envisions a participatory democracy; whereby Parliament exercises transparency, accountability, and facilitates public involvement in the legislative process³⁴. The delay in the implementation of the tax is in light of the media response from the major beverage companies; and the risks to increased unemployment linked to the implementation of the tax. The proposal of SSB tax arose as a strategy from the Department of Health for the prevention and control of obesity. Furthermore, SSB tax is just one of the mechanisms being proposed to combat obesity and other NCDs in South Africa.

On the 7th of November 2017 the Standing Committee on Finance voted to adopt the Draft Bill which includes the 'health promotion levy'. The Draft Bill now referred to as the Rates and Monetary Amounts Bill was then presented to the National Assembly, which was discussed for either approval or disapproval by Parliament. On the 21st of November 2017, the National Assembly adopted the health promotional levy contained in the Rates and Monetary Amounts Bill³⁵. This Bill was then presented to the National Council of Provinces (NCOP) select committee on finance for consideration and if the Rates and Monetary Amounts Bill is adopted by the NCOP it will be presented to the President of the Republic of South Africa for assent and the Rates and Monetary Amounts Bill will be promulgated as an Act of Parliament. Sugar-sweetened beverage tax is expected to be implemented on the 1st of April 2018³⁶.

South Africans are not unfamiliar with SSB tax as the tax was previously imposed for a nine-year period but abolished in April 2002. The tax on sugary drinks was previously levied on a volume or per litre basis; imposed purely to generate revenue; and was unrelated to any health objectives³⁷. The reintroduction of the tax is justified by the government as a measure to address obesity in relation to the excessive consumption of sugar contained in SSBs. The government is hopeful that the increase in the price of these sugary beverages will ultimately lead to the reduction in the demand and consumption of these products.

³³ Cullian K 'Govt waters down sugary drinks tax' *The South African Health News Service*, 22 February 2017, available at <https://goo.gl/6aTt4u>, last accessed 11 May 2017.

³⁴ The Constitution of the Republic of South Africa (No. 108 of 1996), (9th Ed), *Juta's pocket Statutes*, chapter 3, section 118, 66.

³⁵ Ensor L 'National Assembly approves sugar tax' (22 November 2017), *Business Live*, available at <https://goo.gl/C9jZr5>, last accessed 30 November 2017.

³⁶ Msomi B 'Sugary drinks tax gets green light for National Assembly' (12 November 2017), *Krugersdorp News*, available at <https://goo.gl/mKKP7Y>, last accessed 21 November 2017.

³⁷ Smith C '#Budget2017: Tax on sugary drinks – health aid or budget band aid?' *Fin24*, 23 February 2017, available at <https://goo.gl/wo8DTq>, last accessed 5 September 2017.

“The taxation of SSBs is a measure that is a part of the action plan of the National Health Department’s Strategic Plan for the Prevention and Control of NCDs (2013 – 2017) and national strategy for the Prevention and Control of Obesity (2015 – 2020)”³⁸.

2.4 The scope of SSB tax in South Africa

In the Policy paper by Treasury the scope of SSB tax includes:

“Added caloric sweeteners such as; sucrose, high fructose corn syrup, or fruit juice concentrates; which include but are not limited to: (i) soft drinks, (ii) fruit drinks, (iii) sports and energy drinks, (iv) vitamin water drinks, (v) sweetened iced tea, and (vi) lemonade, amongst others. Beverages that only contain naturally built sugars would be excluded from the tax (e.g. unsweetened milk, milk products and 100% fruit juice)”³⁹.

However Treasury stated in the 2016 Budget Speech that intrinsic sugars⁴⁰ will be added to the list as this will ultimately reduce the levels of sugar contained in sugary beverages and this enables the tax to be in direct proportion to the level of sugar found in SSBs⁴¹.

The Rates and Monetary Amounts Bill includes product-specific levies on sugary beverages, these are all taxed at the same rate of 2.1 cents per gram of sugar content that exceeds 4 grams per 100ml of SSB. The following product-specific levies are included within the scope:

“Chocolate and other food preparations containing cocoa, cocoa powder containing added sugar or other sweetening matter⁴², malt extract which contain food preparations of; flour, groats, meal, starch or malt extract, not

³⁸ National Treasury Policy Paper (note 3 above) 2.

³⁹ National Treasury Policy Paper (note 3 above) 2.

⁴⁰ Intrinsic sugars are sugars that occur naturally or sugars contained within unprocessed foods. ‘Sugar’ is defined within the Amendment rules of the Customs and Excise Act, 1964 (note 31 above), section 54I.01, (b)(v), 2.

⁴¹ National Treasury Policy Paper (note 3 above) 17.

⁴² Rates and Monetary Amounts Bill (note 5 above), Health Promotion Levy Item 191.01, 23.

containing cocoa or containing less than 40% by mass of cocoa calculated on a totally defatted basis, which is not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, which do not contain cocoa or which contain less than 5% by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included⁴³; preparations for making beverages(excluding those of tariff subheading 1901.90.20)⁴⁴, syrups and other concentrates or preparations for making beverages, not having a basis of fruit juice (excluding those of tariff subheading 2106.90.69)⁴⁵, syrups and other concentrates or preparations for making beverages, with a basis of fruit juice (excluding those of tariff subheading 2106.90.69)⁴⁶, drinking straws, containing flavouring preparations⁴⁷, waters; including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages (excluding fruit or vegetable juices of heading 20.09)⁴⁸, waters; including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, which are contained in sealed containers holding 2,5 litres or less (excluding those in collapsible plastic tubes)⁴⁹, non-alcoholic beer in sealed containers holding 2.5 litres or less (excluding those in collapsible plastic tubes and those with a basis of milk)⁵⁰, and other beverages in sealed containers holding 2.5 litres or less (excluding those in collapsible plastic tubes and those with a basis of milk)”⁵¹.

Treasury has proposed that the tax is levied in grams dependant on the actual sugar content in sugary beverages. This method will accurately allow the harmful sugar content in SSBs to be measured; and incentivises manufacturers to reformulate their products in order to decrease the sugar content contained in SSBs, therefore decreasing their tax liability. A tax directly in proportion to the sugar levels of SSBs would encourage consumers to opt for healthier

⁴³Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.02, 23. The importance of this lengthy inclusion indicates the development that Treasury has made to expand the scope of the tax from the initial Policy Paper implemented in 2016.

⁴⁴Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.02. 05, 23.

⁴⁵Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.05.05, 23.

⁴⁶Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.05.10, 23.

⁴⁷Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.05. 15, 23.

⁴⁸Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191.07, 24.

⁴⁹Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191. 07 and 191.07.05, 24.

⁵⁰Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191. 07 and 191.07.15, 23.

⁵¹Rates and Monetary Amounts Bill (note 5 above) Health Promotion Levy Item 191. 07 and 191.07.25, 24.

beverage substitutes which contain lower sugar content levels and encourage producers to reformulate their products⁵².

2.5 The threshold approach

There is much deliberation around whether the sugar should be taxed per gram or by applying the threshold method; and only taxing the added sugar content above this threshold mark. The approach provides an allowance for a minimum sugar content level to escape taxation. By setting a minimum threshold this may further encourage producers to reformulate towards manufacturing SSBs with a low sugar content level. The threshold method would be easier for administration and after consultations it seems as if Treasury will adopt this approach⁵³.

Treasury previously indicated in the 2016 Budget Speech that the tax rate would be 2.29 cents per gram, however in the February 2017 Budget Speech; Treasury reduced the tax to 2.1 cents per gram and the first 4 grams per 100ml of the beverage is exempt from taxation. Treasury previously indicated that a 20% SSB tax will reduce obesity by 3.8% amongst men and by 2.4% amongst women. This assertion was based on the ‘mathematical model’ developed at The University of Witwatersrand (WITS) which predicted that a 20% tax on sugary beverages is capable of an energy intake reduction by about 36kJ per day⁵⁴.

However, Treasury has reduced the proposed taxation of SSBs from 20% to 11%; and in the initial proposal the tax was going to be levied on all sugar in drinks without any exemption. However despite the reduction of the tax by nearly half, studies still predict a potential positive impact to reduce the purchase and consumption of these beverages; and therefore assist to reduce the prevalence of obesity and other NCDs⁵⁵. A 330ml can of Coca Cola has about 30grams of sugar; with the new threshold 12 grams of this sugar will be exempt from the tax. Therefore, a can of Coke will cost an extra 46 cents rather than 80 cents. A can of coke (330ml) contains approximately eight teaspoons of sugar; the first three teaspoons will be considered ‘tax free’ (4g/100ml).

⁵² National Treasury Policy Paper (note 3 above) 16-18.

⁵³ ‘Proposed Tax on Sugary Beverages: policy rationale’ - Standing Committee on Finance, (31 January 2017), *The Department of National Treasury*, 23, available at <https://goo.gl/ecHhDv>, last accessed 7 November 2017.

⁵⁴ Manyema M *et al* (note 13 above), 4-5.

⁵⁵ Smith C ‘#Budget2017: Tax on sugary drinks – health aid or budget band aid?’ (note 37 above).

2.6 The Sugar content

The Draft Rules issued by SARS contain the requirements to determine the sugar content on sugary beverages that are subject to the levy. The levy applies to sugary beverages that are manufactured or imported to South Africa. Section 54I.05 (a) of the Draft Rules requires the sugar content of any sugary beverage to be determined and declared by any person that is liable for the levy on sugary beverages that manufactures or imports these beverages. This determination or declaration is based on three factors which are; in terms of the Foodstuffs, Cosmetics and Disinfectants Act, No. 54 of 1972, the sugar content stated on the sugary beverage food label⁵⁶. The second determination is a test report which is obtained from a testing laboratory recognised by the National Regulator for Compulsory Specifications of South Africa in respect of the certified sugar content contained in sugary beverages⁵⁷. This report must be retained for a period of five years from the date of manufacture or import of the sugary beverage for inspection if requested by an officer⁵⁸. Finally, the third determination is a sugary beverage which is assumed to have a deemed sugar content of “20 grams per 100 millilitres”⁵⁹. The Draft Rules provide a provision for the determination of the sugar content of powders, liquid concentrates or preparations for the making of beverages, according to the product specifications on the sugary beverage by the manufacturer of the beverage; the sugar content is determined by the total volume when mixed or diluted of the prepared beverage⁶⁰.

2.7 The classification of commercial manufacturers of sugary beverages

Section 54I.02 provides three instances in which a person may be classified as a commercial manufacturer of sugary beverages. These instances are as follows; the manufacture or expected manufacture of sugary beverages by a person of more “than 50 000 litres of sugary beverages per calendar year”⁶¹. If a person qualifies under this section as a commercial manufacturer, they will then be required to register and license their warehouse premises as a

⁵⁶ Draft Amendment Rules 2017 (note 32 above) section 54I.05 (i)(a), 3.

⁵⁷ Draft Amendment Rules 2017 (note 32 above) section 54I.05 (a)(ii)(aa), 3.

⁵⁸ Draft Amendment Rules 2017 (note 32 above) section 54I.05 (a)(ii)(bb), 3.

⁵⁹ Draft Amendment Rules 2017 (note 32 above) section 54I.05 (a)(iii), 3.

⁶⁰ Draft Amendment Rules 2017 (note 32 above) section 54I.05 (b), 3.

⁶¹ Draft Amendment Rules 2017 (note 32 above) section 54I.02 (a), 2.

manufacturer of sugary beverages by filling the applicable form and annexures⁶². In the event that a person qualifies as a non-commercial manufacturer, he or she must register in terms of section 59A of the Customs and Excise Act; and the applicable rules as a non-commercial manufacturer of sugary beverages⁶³. Furthermore, no security is required to be furnished in the application for the registration as a non-commercial manufacturer unless the Commissioner deems otherwise⁶⁴. The second instance that may qualify a person as a commercial manufacturer involves the manufacture of a “combined total quantity of more than 50 000 litres of sugary beverages per calendar year” by a related person who manufactures or is expected to manufacture sugary beverages⁶⁵. The final instance which may qualify a person as a commercial manufacturer, applies to the manufacture of sugary beverages on the same or adjacent premises of the manufacturing of sugary beverages; by any person that manufactures or is expected to manufacture a “combined total quantity of more than 50 000 litres of sugary beverages per calendar year”⁶⁶.

2.8 Foodstuffs, Cosmetics and Disinfections Act No. 54 of 1972

According to the current regulations (R146⁶⁷) to the Act at hand, minimum nutritional information is not a mandatory requirement. Therefore, any food or beverage that does not make any claims with regards to nutritional information or dietary value on their products is permitted. Nutritional information contained on the label of all food and beverage products should be mandatorily declared and not optional; as this will act as a guide to consumers regarding the benefits or side effects of consuming the product. Due to the lack of the labeling obligation on producers; the labels on SSBs do not contain any nutritional or dietary information on their products. One proposition is that for SSBs that currently do not contain any nutritional labeling, a moderately higher fixed rate of sugar per gram be charged to the producers of SSBs⁶⁸. Until legislative framework is implemented that compels mandatory nutritional labeling; this may be used as a measure to motivate producers to apply nutritional

⁶² Draft Amendment Rules 2017 (note 32 above) section 54I.03 (a)(ii), 2. The form is currently named Form DA 185.

⁶³ Draft Amendment Rules 2017 (note 32 above) section 54I. 03 (a)(i), 2.

⁶⁴ Draft Amendment Rules 2017 (note 32 above) section 54I.03 (b), 3.

⁶⁵ Draft Amendment Rules 2017 (note 32 above) section 54I.02 (b), 2.

⁶⁶ Draft Amendment Rules 2017 (note 32 above) section 54I.02 (c), 2.

⁶⁷ Foodstuffs, Cosmetics and Disinfectants Act No. 54 of 1972 in GN 1 March 2010, R.146, Section 50, 28, found in *Straatskoerant* (No. 32975), 3, available at <https://goo.gl/wJhC3t>, last accessed 7 October 2017.

⁶⁸ Baloyi N ‘Proposed ‘Sin’ Tax on Sugar Sweetened Beverages’ (2016), *Werksmans Attorneys*, 2, available at <https://goo.gl/3VuPe9>, last accessed 5 July 2017.

labeling to their products. Draft regulations (R429⁶⁹) have been published for public comment amending the claims requirement but have not yet been promulgated. The new draft regulation imposes a compulsory obligation on all food products and beverage items to contain minimum nutritional information even if these commodities do not make any dietary or nutritional claims⁷⁰. The inclusion of this particular Act is important as it deals with the labeling requirements on SSBs and regulation number 429 forms part of and is read together with the Act, will contribute to improvement of health and consumer education in South Africa. This will notify consumers' about the nutritional value or lack thereof, of a product before the product is purchased by the consumer. Furthermore, this will also assist the government's fiscal health policy objectives to be achieved.

2.9 Customs and Excise Act No. 91 of 1964

The Act provides the levies of customs and excise duties such as; the Road Accident Fund, fuel levy, air passenger tax, environmental levy, levies pertaining to manufacture, import and exportation of goods and other incidental matters relating to prohibition and control of certain goods⁷¹. This Act provides the levies of customs and excise duties and contains numerous chapters and schedules each pertaining to a specific levy. Therefore, SSB tax will be implemented through the insertion of a category to a Schedule of this Act. Under the Act in terms of sections 54F and 120, the rules are amended and Chapter VB will be inserted which contain the Health Promotion Levy Rules⁷². The inclusion of the Act is two-fold; SSB tax will be implemented as a category to a schedule of the Act; and SSB tax is considered an excise tax based on the nature of excise taxes.

2.10 The administration of SSB tax

The proposed SSB tax will be implemented through the Act just as any other excise duties and product specific levies would be. The legislation can be legally implemented through the

⁶⁹Foodstuffs, Cosmetics and Disinfectants Act No. 54 of 1972 in GG 29 May 2014, No. 10203, Vol. 587, regulations relating to the labeling and advertising of foods, amendment R.429, section 52, found in *Straatskoerant* (No. 37695), 43, available at <https://goo.gl/uiHzgg>, last accessed 7 October 2017.

⁷⁰ National Treasury Policy Paper (note 3 above) 20.

⁷¹'Legislative framework', *SARS*, (last updated 21 October 2016) available at <https://goo.gl/rAkWd7>, last accessed 12 September 2017.

⁷² Draft Amendment Rules 2017 (note 32 above).

yearly Rates and Monetary Amounts and Amendment of Revenue Laws Bill. An additional category to the Schedules of the Act would have to be created as a levy on selected SSBs⁷³. Schedule No.1 of the Act is accordingly amended to include Part 7 of Section A; and the proposed levy has been implemented in the Bill mentioned above under the heading ‘Health Promotion Levy’⁷⁴. Each line in a column will contain information about a specific beverage including the tariff item number, the tariff subheading, a description of the beverage, and the rate of the levy. Duty at-source (DAS) is the general principle for excise administration and will be applied for the ease of administration⁷⁵.

2.11 What are the government’s objectives regarding SSB tax?

According to Parliament the tax is aimed at reducing increasing obesity levels in the country as well as decreasing the prevalence of NCDs. A Department of Health’s strategy is to reduce the prevalence of obesity by 10% by 2020; as South Africa has the highest prevalence of obesity in Sub-Saharan Africa⁷⁶.

There are two main goals to the proposed SSB tax in South Africa. There is no doubt that the primary objective of the tax is to reduce the increasing rates of the prevalence of obesity and the rapid growth of NCDs. A subsidiary goal would be the revenue generation aspect which will flow from the implementation of SSB tax. Such revenue is to be invested in health care and consumer education programmes aimed at educating the public about the negative consequences of consuming SSBs; once again to deter the consumption of SSBs. Furthermore, any excess revenue generated after the implementation and funding of the educational programmes and campaigns; is to devolve to the State and the fiscus for use in other health initiatives by the Department of Health. This will assist to alleviate the financial health burden on the State.

2.12 Concluding remarks

Whether the government will adhere to and execute these objectives to achieve the desired results; is yet to be seen in the months and years to come once the tax is implemented.

⁷³ National Treasury Policy Paper (note 3 above) 20.

⁷⁴ Draft Rates and Monetary Amounts Bill (note 5 above) 23.

⁷⁵ National Treasury Policy Paper (note 3 above) 20.

⁷⁶ National Treasury Policy Paper (note 3 above) 2.

Furthermore, in order to effectively assess the proposed SSB tax, it is useful to look into the international experience compared to the proposed fiscal policy in South Africa. The next chapter deals with the international context and application of SSB tax across selected international jurisdictions.

CHAPTER THREE

3. The international context

3.1 Introduction

This chapter analyses and discusses the effect and consequences of SSB tax across international jurisdictions such as the United Kingdom, Mexico, France and Berkeley. The latter jurisdictions have already implemented SSB tax. It is therefore useful to assess whether they have found the tax led to a reduction in the rate of obesity, NCDs and sugar consumption. The tax design behind SSB tax in the UK will be analysed in comparison to the proposed fiscal health policy to be implemented in South Africa. The international context is analysed in order to gather information about the experience of SSB tax across other jurisdictions; and to compare the tax design and effect of SSB tax to the proposed SSB tax in South Africa. The international experience of SSB tax will provide an indication of success or failure of the SSB tax design; as well as the long-term effect to reduce the prevalence of obesity and other NCDs in South Africa.

3.2 The UK

3.2.1 The origin and development of SSB tax

According to the UK Draft Policy Paper for the taxation of SSBs; SSB tax is anticipated to take effect from April 2018⁷⁷. The objectives of the policy are linked to health measures aimed at tackling the increasing rates of obesity and other NCDs in the country. Therefore, the levy is aimed to promote the government's healthcare initiatives to remove the added sugar content levels from SSBs in order to prevent childhood and adult obesity. The levy is aimed at encouraging producers to embark on the reformulation of their products in order to reduce the added sugar content levels contained in SSBs; and to encourage SSB importers to import beverages that contain low added sugar content levels. The main aim of the healthcare plan is to move consumers towards healthier living and purchase behaviour. The explanatory

⁷⁷ 'Soft Drinks Industry Levy – policy paper' (5 December 2016) *HM Revenue & Customs* available at <https://goo.gl/gpK7b>, last accessed 14 September 2017.

notes to the Draft Provisions for the Finance Bill 2017, explain that the process of reformulation will allow producers and importers of SSBs to fall below the threshold rate of the tax; and perhaps escape the tax altogether⁷⁸. On the 27th of April 2017, the Finance Act 2017 (Chapter 10) received Royal assent and was accordingly enacted by Parliament⁷⁹. The tax will ultimately affect producers and importers of soft drinks in the UK; and small producers of soft drinks will be eligible for an exemption⁸⁰.

3.2.2 The administration of the tax

The legislation of SSB tax was introduced in the Finance Bill 2017⁸¹ and received Royal assent, and is now referred to as the Finance Act 2017 (Chapter 10). The legislation includes the following important provisions for the purposes of this dissertation; the definition of a ‘soft drink’⁸², the scope of the levy and the type of SSBs⁸³ that will be subject to taxation, the added sugar content levels and the specific tax thresholds that are applicable to producers⁸⁴. The legislation also includes the rate of tax to be charged on beverages which contain added sugar; and a comprehensive list of all beverages which are excluded from taxation⁸⁵. The legislation further provides for the persons required to register⁸⁶ and pay for the levy⁸⁷; and the definitions that define a ‘small producer’⁸⁸. Furthermore, the protocol regarding the payment, collection, recovery and the enforcement of the levy are contained within the Act⁸⁹.

⁷⁸ ‘Finance (No. 2) Bill 2017 – explanatory notes’ Clause 71 (Soft Drinks Industry Levy) (20 March 2017), *HM Treasury*, 315 available at <https://goo.gl/zE8pzK>, last accessed 14 September 2017.

⁷⁹ The Finance Act 2017 (Chapter 10) (note 4 above) 19-36.

⁸⁰ The Finance Act 2017 (Chapter 10) (note 4 above) section 37, 23.

⁸¹ Note 55.

⁸² The Finance Act 2017 (Chapter 10) (note 4 above) section 26, 19.

⁸³ The Finance Act 2017 (Chapter 10) (note 4 above) section 29, 20.

⁸⁴ The Finance Act 2017 (Chapter 10) (note 4 above) 25. Section 38(7) defines the threshold for a ‘small producer’ to be 1 million litres in the previous 12 months; therefore any amount over this will disqualify the producer from being defined as a ‘small producer’.

⁸⁵ The circumstances in which the levy is charged and the exclusions are discussed below.

⁸⁶ The Finance Act 2017 (Chapter 10) (note 4 above) section 40-45, 26-28.

⁸⁷ The Finance Act 2017 (Chapter 10) (note 4 above) section 35, 23.

⁸⁸ The Finance Act 2017 (Chapter 10) (note 4 above) section 38, 24. In order to be defined as a ‘small producer’ the Act stipulates two conditions that must be met (section 38(2) and section 38(3) respectively. For the purposes of this dissertation it is unnecessary to elaborate on these conditions, as the important point to note is that the Act contains certain conditions to be fulfilled before a producer may be defined as a ‘small producer’ and qualify for the ‘small producer’ exemption.

⁸⁹ The Finance Act 2017 (Chapter 10) (note 4 above) section 52-54, 32-33.

3.2.3 The tax rate

There are two branches to the tax, the first targets soft drinks that contain more than 5 grams of sugar per 100ml at 18 pence per litre and the second; targets soft drinks that contain more than 8 grams of sugar per 100ml at 24 pence per litre⁹⁰. The soft drinks industry levy is charged upon the occurrence of two events as of the 6th of April 2018⁹¹, these events are; soft drinks packaged in the UK and soft drinks imported to the UK⁹². The 100ml beverage applies to the ‘prepared drink’ that requires the drink to be diluted; the diluted level of the drink is then assessed as indicated by the information contained on the packaging of the beverage in order to determine what quantity of the drink will be subject to taxation⁹³.

3.2.4 The tax scope

Sugar-sweetened beverage tax will apply to all beverages that contain added sugar and alcoholic drinks that contain an alcohol volume of up to 1.2%⁹⁴. The legislation also provides for the following exemptions; alcohol substitute drinks, milk based drinks which contain more than 75% of milk; and milk substitute drinks which contain a specified quantity of calcium and milk are also excluded from taxation; as well as beverages used for medicinal purposes.

3.2.5 The tax proposal: South Africa versus the UK

It is evident that the UK Act mentioned above is intricately detailed and covers all areas of contention and concern. This may act as a guide to provide an insight on different tax policy mechanisms to South African law makers and may assist law makers on aspects relating to the structure of SSB tax. The UK tax differs from South Africa’s proposal in the following ways⁹⁵:

⁹⁰The Finance Act 2017 (Chapter 10) (note 4 above) section 29(1)(b), 20 & section 36, 23.

⁹¹The Finance Act 2017 (Chapter 10) (note 4 above) section 31, 21.

⁹²The Finance Act 2017 (Chapter 10) (note 4 above) section 32-33, 21-22.

⁹³The Finance Act 2017 (Chapter 10) (note 4 above) section 27, 19-20.

⁹⁴The Finance Act 2017 (Chapter 10) (note 4 above) section 26 & 19, 29-20.

⁹⁵Subban V & Sher Y (note 6 above). Although this source deals with the Draft Finance Bill, it is useful as comparisons may be drawn in order to differentiate between the two tax designs.

1. SSBs in South Africa will be levied at the rate of 4 grams of sugar per 100ml. However the UK has two levies which are 5 grams of sugar per 100ml and 8 grams of sugar per 100ml respectfully. Any added amount of sugar above these threshold marks will be subject to taxation.
2. Beverages with an alcoholic strength of less than 1.2% will be taxed in the UK whereas in South Africa alcohol is taxed under a separate levy.
3. In South Africa, Treasury recently announced that pure fruit juices may be taxed as these contain intrinsic sugars; but has mentioned nothing regarding the exclusion of vegetable juice, except for the exclusion of vegetable juice from mineral and aerated waters⁹⁶. In terms of the recently enacted UK Act, both pure fruit and vegetable juices are subject to taxation and are subsequently excluded from the exempt beverages. There could be many reasons as to why the UK Parliament decided to include pure fruit and vegetable juices in the category of those subject to taxation; one possible reason could be that many health officials suggest that the consumption of pure fruit juices should be limited to not more than 150ml per day, this is due to the fact that pure fruit juice and some vegetable juices contain natural sugars and excess consumption of natural sugars could also lead to diabetes and other NCDs.
4. The UK Act exempts all milk based drinks and milk substitute drinks, whereas in South Africa, Treasury has only indicated that unsweetened milk products will be exempt from taxation; and made no reference as to the tax treatment of milk based and milk substitute drinks. However, currently the non-alcoholic beers and ‘other’ sugary beverages with a basis of milk will be included in the levy⁹⁷.
5. The ‘small producer’ exemption contained in the UK Act applies to small producers who do not exceed 1 million litres of production in the previous 12 months. However in South Africa, Treasury has not defined whether small producers will be given an exemption and if so at what margin the exemption will apply to. In South Africa, the determination of a commercial and a non-commercial manufacturer of sugary beverages have been defined and are stipulated in the Draft Amendment Rules issued by SARS.
6. The UK Act provides a levy for ready-to-drink beverages and concentrates which are intended to be diluted with water. Similarly, in South Africa fruit drink concentrates

⁹⁶Rates and Monetary Amounts Bill (note 5 above), Health Promotion Levy Item 191. 07, 24.

⁹⁷Rates and Monetary Amounts Bill (note 5 above), Health Promotion Levy Item 191.07.15 and 191.0725, 24.

such as Oros are included in the levy⁹⁸; and the Draft Amendment Rules stipulate how the sugar volume will be calculated once mixed or diluted⁹⁹.

7. Drink mix in the form of powder is not provided for and included in the UK Act. However in South Africa, it is indicated that powders are included within the scope of the tax.
8. The UK and South Africa have both adopted the threshold approach as a tax rate measure. The key with the threshold approach is that producers of SSBs must endeavor to reformulate their products in order to bring the added sugar content in beverages below the threshold mark to enable it to be 'tax-exempt'.

Both the UK and South African tax designs share common fiscal policy health objectives and aims to encourage producers of SSBs to embark on reformulation of their products. However, based on the above comparison, it is evident that the tax design by Treasury in South Africa does not provide for the 'small producer' exemption; and it is uncertain whether lawmakers will amend the current Rates and Monetary Amounts Bill to include an exemption for 'small producers'. Furthermore, the tax treatment of vegetable juice and what beverages fall under the category of 'other' remains vague. The UK tax design retains the charge in the hands of the producer of SSBs to prevent the charge from passing to the consumer by imposing the levy upon the occurrence of two events mentioned above. In South Africa it seems as if the manufacturer or importer of sugary beverages will bear the burden of the levy as stipulated in the Draft Amendment Rules issued by SARS; and consumers' can be expected to pay about 11% more for a sugary beverage once the proposed tax is implemented. Therefore, there are a few gaps in the proposed tax design of SSBs by Treasury in South Africa, and a thorough re-evaluation needs to be conducted to address any disparities that exist with regards to the proposed tax design. Although South Africa initiated the SSB tax proposal before the UK, it is clear that the UK's tax design and proposal provides specific provisions dealing with every aspect of the tax; and without surprise the Finance Bill 2017 (Chapter 10) was enacted as an Act of Parliament; and accordingly the SSB levy implemented as law. As mentioned in chapter one, the implementation of SSB tax in South Africa is delayed due to the government engaging in further consultations; and SSB is expected to be implemented on the 1st of April 2018.

⁹⁸Rates and Monetary Amounts Bill (note 5 above), Health Promotion Levy Item 191.05.05 and 191.05.10, 23.

⁹⁹Draft Amendment Rules 2017 (note 32 above) section 54I.05 (b), 3.

3.3 Mexico

3.3.1 The tax rate

The tax is levied at 1 Mexican peso (about £0.04) per litre¹⁰⁰.

3.3.2 The tax scope

Alcoholic drinks are excluded from the tax scope as they are taxed under a separate levy. The tax is levied on any beverage that contains the following:

“Added powder, syrup, flavour extract, sugar or caloric sweeteners, fizzy and energy drinks, bottled tea and coffee, fruit juice and any fruit flavoured drink that contains added sugar”¹⁰¹.

3.3.3 The origin and development of SSB tax

In 1926 the Coca-Cola Company began bottling and selling sodas and the first Coca-Cola vending machines were installed fourteen years thereafter in Mexico City. Furthermore, Vincente Fox was the Head of Coca-Cola in Mexico before taking office as President in the year 2000¹⁰². Therefore, soft drinks have played a vital part in Mexican culture, particularly the brand Coca-Cola. Due to the fact that many communities lack safe drinking water, these sugary drinks have been one of the reasons why many children and adults will choose them as a source of energy. On the 8th of September 2013, under the provisions of article 71, section I, of the Political Constitution of The United Mexican States; President Enrique Peña Nieto presented the Bill pertaining to SSB tax. The Bill was amended and repealed certain provisions of the Value-Added Tax Law of the Impuesto Especial Sobre Productos y Servicios¹⁰³ (IEPS Act) and the Fiscal Code of Federation¹⁰⁴.

¹⁰⁰ Pineda E ‘What the world can learn from Mexico’s tax on sugar-sweetened drinks’ (2016) available at <https://goo.gl/LE8nCX>, last accessed 26 August 2017. All references to the rate and scope of the tax are from secondary sources.

¹⁰¹ Note 100.

¹⁰² Soares A (note 14 above) 239–240.

¹⁰³ Broseta A ‘Información de Impuesto Especial de Producción y Servicios (IEPS)’ (2017), *Rankia*, available at <https://goo.gl/EBvnpX>, last accessed 11 November 2017.

¹⁰⁴ ‘Taxes on Sugar-sweetened Beverages as a Public Health Strategy: The Experience of Mexico’ (2015) *Pan American World Health Organization*, 39, available at <https://goo.gl/LfLG4D>, last accessed 14 September 2017.

3.3.4 The effect and results of SSB tax

According to the *Global status report on NCDs 2014*, the age-adjusted prevalence of diabetes in adult Mexicans increased from 10.2% to 10.7% between the years 2010-14¹⁰⁵. The Director of the Mexican Research Centre in Nutrition at the National Institute of Public Health and the co-author of the British Medical Journal (BMJ); Dr Juan Rivera Dommarco, published a study that indicates that in the year 2014 the sales of SSBs subject to taxation declined by an average of 6%; and by a further 12% at the end of the year. In addition, the purchase of non-taxed beverages including bottled water increased on average by about 4%. It is evident that the taxation of SSBs will not solve the health issue of diabetes but will aid in the contribution of controlling the disease and other NCDs. The Soft Drinks Manufacturers Association of Mexico (the ‘Asociación Nacional de Productores de Refrescos y Aguas Carbonatadas’) argued that SSB tax was regressive in nature and that the tax had a negative effect on poor households, consequently they were unconvinced by the researchers’ conclusions. The Association further argued that there was a failure to significantly reduce the average intake of calories for Mexicans’; however Dr Rivera Dommarco believes that the impact on low-income individuals has to be quantified in terms of the health improvement of Mexican citizens. Dr Rivera Dommarco’s study found that there was a 9% reduction on average in the purchase of SSBs. The reduction was found to be greater among the poor therefore, greater health benefits may be assumed to be seen amongst poor people¹⁰⁶. In 2015 there was a decrease of annual sales “from 163 litres to 137 litres per capita”; and the reduction in the consumption of SSBs is estimated to reduce the prevalence of obesity by 1%; this baseline is based on the intake of 163 litres of SSB per person.¹⁰⁷

In Mexico more than 70% of the population is obese or overweight and the consumption of SSBs amounts to more than 70% of the added sugar consumed by Mexicans’¹⁰⁸. In a study conducted in July 2013 by the United Nations Food and Agriculture Organization (FAO), it was found that among the member countries of the Organization for Economic Cooperation and Development (OECD) Mexico had the highest adult obesity rate¹⁰⁹. The money raised by SSB tax in Mexico has been invested in obesity prevention and health

¹⁰⁵ The figures refer to Mexican’s with Type 1 and Type 2 diabetes.

¹⁰⁶ Soares A (note 14 above) 239.

¹⁰⁷ Soares A (note 14 above) 239-240.

¹⁰⁸ Boseley S ‘Mexico's sugar tax leads to fall in consumption for second year running’ (22 February 2017), *The Guardian*, available at <https://goo.gl/MQ0od>, last accessed 3 September 2017.

¹⁰⁹ Note 104, 12.

promotion. Dr Gojka Roglic, a medical officer of the WHO added that the decrease in sales of sugary drinks is positive but there is no conclusive evidence as to whether SSB tax has reduced the prevalence of obesity and type 2 diabetes. Dr Rivera estimates that by the year 2050 the number of diabetes cases that could be averted is around 400 000; this is provided that the tax on sugary drinks remains enforced. Health policies on prices are aimed and designed to influence consumers to engage in healthier consumer purchasing behaviour, for example; the taxation on sodas is at a higher rate than bottled water to influence change in purchasing and dietary behaviours¹¹⁰.

In a study titled *Beverages Sales in Mexico before and after Implementation of a Sugar Sweetened Beverage Tax*¹¹¹, the objective of the study was to estimate the changes in the sales of SSBs; and the sales of plain water after SSB tax was introduced and implemented in 2014. Since 2014, the sales of plain water increased and after adjusting the global indicator of economic impact and seasonality to sales; it was found that between the post-tax periods (2014-15); there was a 7.3% decrease in the average SSBs sales as compared to the pre-tax period (2007-2013). During the years 2014-15, there was an increase of 5.2% in sales in plain water¹¹². It is evident from the above results that SSB tax could have a positive impact on health. However, the tax is modest and if the rate was increased it may create an even greater impact on health.

The results based on the studies above have been conducted over a short time period. The information available pertaining to sales, the impact and effectiveness of the tax on sugar consumption and obesity is limited; and more studies are being performed but have not yet been completed. Therefore, it is questionable whether a reliable conclusion regarding obesity levels can be drawn solely based on the current decrease of SSB sales in Mexico. However it can be assumed based on predictable simulation and studies that have been conducted thus far that should the sales of SSBs continue to decrease; it may lead to a decrease in the average sugar consumption intake per person and lower future obesity rates in Mexico.

¹¹⁰ Soares A (note 14 above) 240.

¹¹¹ Colchero M.A *et al* (see note 15 above), 1.

¹¹² Colchero M.A *et al* (see note 15 above) 3-5.

3.4 France

3.4.1 The tax rate

Initially the proposed tax was set at €3.58/hL (\$0.05/L), and was aimed at generating an estimated €120 million in revenue to fund health programmes and health care initiatives. However in October 2011, France's National Assembly voted in favour of enacting a SSB tax and doubled such rate to €7.16/hL (\$0.10/L) in 2014. In 2015 the rate was re-adjusted according to the CPI and the tax increased to €7.45/hL (\$0.11/L)¹¹³.

3.4.2 The tax scope

The tax is based on volume rather than on sugar content and includes the following:

“Soft drinks, fruit beverages, vitamin water, flavoured milk which contain added sugar and ASB (with aspartame¹¹⁴) with no added sugar. The following beverages are excluded from taxation; beverages without added sugar such as: natural fruit juices, starter and follow-up infant formula, growing-up milk, enteral nutrition¹¹⁵, foods for sick and under-nourished people; as well as foods for medicinal purposes”¹¹⁶.

3.4.3 The origin and development of SSB tax

On the 24th of August 2011, French Prime Minister François Fillon announced the government's intention to enact a tax on sugary beverages. The initial measure and formulation of SSB tax was targeted to reduce the consumption of certain food items which contribute to obesity. The disease was rapidly increasing and insurance costs were rising in the country. The elected representatives also voted in favour of a tax on ASB. The two taxes

¹¹³Case study: taxing sweetened drinks in France (note 16 above) 1. All references are obtained from secondary sources.

¹¹⁴A common artificial sweetener used in beverages and which is also found naturally in many foods, ‘aspartame’ (28 May 2014), *American Cancer Society*, available at <https://goo.gl/UdXqCF>, last accessed 15 September 2017.

¹¹⁵A method of tube feeding using the gastrointestinal tract to deliver nutrients to a sick individual, ‘enteral and parenteral nutrition’ (September 2011), *American College for Gastroenterology*, available at <https://goo.gl/9QiW4e>, last accessed 15 November 2017.

¹¹⁶Case Study: taxing sweetened drinks in France (note 16 above) 2.

differ in terms of their objectives, the first objective is a public health measure and the second; is a revenue-generating measure aimed at lowering farm labour costs. The initial framework of the tax fell within the broader scope of the French National Nutrition and Health Programme (NNHP) as one of the public health measures that target the promotion of healthier lifestyles. However the health measure by the NNHP is not included in the final text of the law enacted by Parliament¹¹⁷ and the Constitutional Council of France ratified these measures on the 28th of December 2011. Sugar-Sweetened Beverage tax and ASB tax took effect on the 1st of January 2012 and both taxes were “respectively inserted under Sections 1613 ter (previously 520 B) and 1613 quater (previously 520 C) of the French General Tax Code”¹¹⁸.

3.4.4 The effect and results of SSB tax

In 2012, the annual revenue generated was €280 million (\$375 million); of which €240 million was from SSBs and €40 million from ASBs and in 2013 a total of €288 million in was generated. The revenue was used for investment purposes and allocated to funding social security programmes such as health insurance. Initially it was agreed by the elected representatives that half of the revenue from SSB tax (€120 million) would be invested in health care initiatives and the remainder of €160 million from ASB tax would be allocated to the government’s general fund. In October 2012, the elected representatives voted for all revenues from SSB and ASB taxes to be allocated to social security from the 1st of January 2013¹¹⁹. After both taxes were implemented there was a decrease of 8% of sales in the non-alcoholic beverage industry and in both years of the implementation of SSB tax, there was a reduction of 2.2% of sales volumes in the non-alcoholic beverage sector¹²⁰.

In a study titled ‘The Impact of ‘Soda Taxes’ on Prices. Evidence from French Micro Data’, the impact of SSB tax on the price of different beverages was analyzed and evaluated after the implementation of SSB tax. The drinks that were evaluated were (cola, energy, tonic and other soft drinks), flavoured waters, and fruit drinks and ready-to-drink teas¹²¹. The study

¹¹⁷ Case Study: taxing sweetened drinks in France (note 16 above) 2.

¹¹⁸ Case study: taxing sweetened drinks in France (note 16 above) 1.

¹¹⁹ Case study: taxing sweetened drinks in France (note 16 above) 2.

¹²⁰ Case study: taxing sweetened drinks in France (note 16 above) 2.

¹²¹ Berardi N *et al* (note 17 above) 19-21.

found that overall SSB tax was fully passed-through to prices¹²² and it was found that the pass-through was higher for sodas than for flavoured waters and fruit drinks¹²³.

In a recent study using household purchasing data to evaluate the ex-post tax effects of SSBs price, it was found that there was a relatively large impact on the prices of non-pure fruit juices at €0.19 per litre and diet sodas at €0.16 per litre. It was further found that there was no significant impact on soft drinks¹²⁴. The difference between both studies is that the study at hand evaluates household shopping prices and the study above evaluates supermarket prices. In both studies different approaches, categories and time spans were analyzed and studied. The categories which were included were; regular drinks (avored mineral waters included), diet drinks and non-pure fruit juices which were all taxable. Mineral water was not taxed and pure fruit juices are exempt from SSB tax. Energy and sport drinks are considered heterogeneous – meaning that it may or may not be subject to tax; depending on whether it contains any sweetener. After a period of six months of SSB tax being implemented there was a pass-through of €0.7-8 on average for sodas. The results indicated a reduction in the quantity of soft drinks and non-pure fruit juices purchased, but diet drinks were not impacted by the tax. The study found that on average there was a reduction of purchased quantities' which was around a can of soda a month per person¹²⁵.

The above studies conducted indicate that prices have indeed shifted to the category of sodas and this price shift may stand to have a mid-to-long term effect to deter the purchase and consumption of SSBs; and ultimately lead to the achievement of France's health objectives.

3.5 Berkley

3.5.1 The development and origin of SSB tax

In March 2015, the city of Berkeley California became the first US jurisdiction to implement a tax on sugar and in November 2014, passed the first excise tax for the purposes of public

¹²² Pass-through to prices means the increased costs associated with the actual product being purchased by the customer due to an increase in company costs.

¹²³ Berardi N *et al* (note 17 above) 19-21.

¹²⁴ Capacci S *et al* (note 18 above) 3.

¹²⁵ Berardi N *et al* (note 17 above) 12.

health¹²⁶. SSB tax was enacted and implemented through *Ordinance 7388-NS*¹²⁷ and was effective from the 1st of January 2015. In early 2014, as a measure to combat obesity and other NCDs within the city; a petition was carried out by the members of the Berkeley Healthy Child Coalition to gather signatures from residents to persuade the City Council to implement a tax on SSBs. The City Council unanimously approved the measure on the 1st of July 2014. The measure was won with a 75% vote in favour of the implementation of SSB tax; and Berkeley became the first city to successfully levy a tax on sugary drinks in the US¹²⁸. Similarly, with the above jurisdictions the tax was implemented in consideration of the increasing obesity and type 2 diabetes rates within the city. The tax was proposed and implemented in an aim to reduce the consumption of SSBs in order to improve the health of the city's citizens¹²⁹.

3.5.2 The rate of tax

The tax is levied at the rate of \$0.01-per-ounce (penny-per-ounce tax). The tax is levied and directed towards the distribution companies and not to the retailer or consumer¹³⁰.

3.5.3 The scope of the tax

The following beverages are subject to SSB tax:

“Energy, sports, and fruit-flavored drinks; sweetened water, coffee, and tea”¹³¹.

According to the Ordinance the following beverages are excluded from taxation:

“Any beverage where the primary ingredient is milk; beverages used for medical purposes or used as a meal replacement as well as baby formula”.

¹²⁶ Fable *et al* (note 19 above) e1.

¹²⁷ Ordinance 7388-NS (2015), 1-9, available at <https://goo.gl/78VeZs>, last accessed 19 September 2017.

¹²⁸ ‘Berkeley vs. Big Soda’ (2015) available at <https://goo.gl/cCg29S>, last accessed 12 September 2017.

¹²⁹ Ordinance 7388-NS (note 127 above) section 2, 2.

¹³⁰ Ordinance 7388-NS (note 127 above) section 7.72.010, 3.

¹³¹ Ordinance 7388-NS (note 127 above) section 7.72.030, 5.

Alcoholic beverages are also excluded from taxation due to the latter already taxed under a separate levy¹³². Furthermore, the Ordinance excludes SSB distributors that have an annual gross receipt of \$100 000 or less and lists all added sweeteners which are excluded from the excise tax”¹³³.

3.5.4 The effects and results of the tax

A study conducted by Fable *et al* entitled ‘Impact of the Berkeley Excise Tax on Sugar-Sweetened Beverage Consumption’¹³⁴ the impact of the consumption of SSBs was studied when a tax on sugar was implemented and is the first evidence to document the impact of SSB tax in the United States. The results were as follows; SSB consumption declined by 21% over a total period of one year in low-income neighbourhoods. There was an increase in SSB consumption by 4% in the comparison neighbourhoods (San Francisco and Oakland, California) in the same year as the study at hand. An adjusted consumption of regular soda decreased by 26% in Berkeley and increased by 10% in the comparison cities. In Berkeley there was a decrease of 36% of the adjusted consumption of sports drinks and an increase of 21% in the comparison neighbourhoods. The consumption of water increased in Berkeley by 63% than in the comparison cities which only increased by 19%¹³⁵.

Berkeley is a city with a relatively high socio-economic status; therefore these results cannot possibly generalize the effects of SSB tax in other states or across other jurisdictions. Although the study at hand provides short-term results of the effect of SSB tax; it provides evidence that a \$0.01 per ounce “city-level” tax in the city of Berkeley reduced the consumption of SSBs in vulnerable neighborhoods. If the impact in Berkeley has the same effect in other jurisdictions across the world, then the evidence from this study is likely to create the same outcome¹³⁶. After Berkeley implemented SSB tax, San Francisco, Oakland, Albany (California), Boulder (Colorado), Philadelphia and Illinois Cook County enacted a tax on sugary beverages.¹³⁷

¹³² Ibid.

¹³³ Ordinance 7388-NS (note 127 above) section 7.72.020, 3.

¹³⁴ Fable J *et al* (note 19 above).

¹³⁵ Fable J *et al* (note 19 above) e3.

¹³⁶ Fable J *et al* (note 19 above) e6.

¹³⁷ Barone J ‘Q&A: Why Soda taxes work’ (12 October 2017), *Berkeley Wellness, University of California*, available at <https://goo.gl/RVWzcZ>, last accessed 9 November 2017.

3.6 Concluding remarks

The city of Berkeley and Mexico has experienced a positive impact on health due to the implementation of SSB tax and will hopefully motivate other jurisdictions within the US and Americas to implement SSB tax in order to achieve similar results. However, further research and studies need to be conducted to study the long-term consequences of SSB tax; and the effects on sugar consumption, obesity and NCDs. The studies conducted in France also indicated a positive result as sales in the non-alcoholic beverage industry declined, the increased price of a soda fully passed through to prices and there was a reduction in the sale of SSBs and non-pure fruit juice. The international experience associated with the implementation and effects of the tax will assist Treasury and the government to implement an effective fiscal policy. The Finance Act 2017(Chapter 10) enacted by the UK possesses similar structural aspects to the fiscal policy initiated by Treasury in South Africa. However, Treasury in South Africa can provide more clarity on the small producer exemption and the taxation of vegetable juice. Furthermore, from the studies conducted in Mexico and Berkeley the effect of the tax has been most effective in low-income households and neighbourhoods which is a positive step in the right direction to impact and improve the health of the public. Sugar-sweetened beverage tax is just one part of a comprehensive strategy to reduce the prevalence of obesity and type 2 diabetes; and immediate results evident according to Dr Rivera Dommarco. Therefore, different measures have to be implemented in conjunction with SSB tax and SSB tax is no silver bullet that will solve the world's health problems. The next chapter deals with the analysis of the so-called 'sin taxes' and will aid in the understanding of the new excise tax soon to be implemented in South Africa.

CHAPTER FOUR

4. The so-called ‘sin taxes’ in South Africa

“Sugar, rum, and tobacco are commodities which are nowhere necessities of life, which are...objects of almost universal consumption, and which are therefore extremely proper subjects of taxation”¹³⁸ (Adam Smith – *Wealth of the Nations*).

4.1 Introduction

This chapter deals with the history of ‘sin taxes’ and the effect that these excise taxes have on the consumption of these commodities over a specified time period in South Africa. The objectives and the rationale for both these commodities will be discussed and analysed as well as an analysis of SSB tax as a form of ‘sin tax’. Generally consuming sugar is seen as far more socially acceptable than the consumption of alcohol and cigarettes. There is no stigma attached to consuming sugar, as adults and children alike consume these products without any care for the negative health effects on health and the economic impact on the economy. The purpose of an analysis on ‘sin tax’ is to identify if SSB tax is similar to a ‘sin tax’; and if so what the experience with the other ‘sin taxes’ indicate, and what we can learn thereof.

4.2 What are ‘sin taxes’?

‘Sin Taxes’ are levies or excise taxes that tax socially disapproved and/or addictive commodities such as tobacco and alcohol. Society views and often tolerates the consumption of these commodities as something that is immoral or frowned-upon. Generally ‘sin taxes’ are designed to stun two birds with one stone; they generate revenue for the state and the commodity is made more expensive with the expectation to curb consumption of the commodity. Therefore, excise taxes are increased in the price of the commodity in the hope

¹³⁸ Claire Wang Y, Coxson P, Shen YM, Goldman L & Bibbins-Domingo K, ‘A penny-per ounce tax on sugar-sweetened beverages would cut health and cost burdens of diabetes’ (2012), *Health Affairs*, 31(No.1), 204, available at <https://goo.gl/2C6DvF>, last accessed 1 October 2017.

that the excise tax will reduce the consumption of such commodity. The levied commodities have the effect to reduce the supply and the consumption of such commodities, by increasing the prices that consumer's pay¹³⁹. The tax is a negative consequence aimed at punishing bad behaviour and not the individual consuming the commodity.

In general "sin taxes" exhibit the following characteristics:

- i. As mentioned above the consumption of commodities such as alcohol and tobacco are often addictive. A small change in the consumption of such commodities will be significant; in the fact that it will increase the revenue generated by the state without eliminating the socially unacceptable behaviour entirely. This tactic allows the government to have a continuous stream of revenue flowing from the continuous existence of the consumption of these commodities.
- ii. The socially unacceptable behaviour has negative effects on an individual's health and general wellbeing. The behaviour is addictive and often self-destructive as an excess consumption of these commodities will lead to long-term consequences such as *inter alia*: obesity, diabetes, domestic violence caused by substance abuse, absenteeism from the work place; increased insurance premiums and health care costs for individuals and the state.
- iii. Negative externalities arise due to the socially undesirable behaviour and the individual suffers as well as other persons within society¹⁴⁰.

4.3 What are excise taxes?

These are indirect taxes on certain goods and services; either produced locally or imported. Excise taxes have some distinguishing features such as; *inter alia* selectivity in what the tax may cover; the intent of the product and the quantity of the product being taxed. These factors contribute towards the liability of the tax. Furthermore, products are levied in specific or ad valorem¹⁴¹ terms. Excise taxes influence consumer consumption behaviour by changing

¹³⁹ Sadowsky J 'The Economics of Sin Taxes' (1994) *Religion and Liberty*, available at <https://goo.gl/ZtAc6C>, last accessed 15 September 2017.

¹⁴⁰ Lorenzi P 'Sin taxes' (2004), *Social Science and Public Policy*, 60, available at <https://goo.gl/vCPjCx>, last accessed 25 September 2017.

¹⁴¹ Ad valorem products are generally regarded as 'luxury items' and include, amongst others: motor vehicles, electronic equipment, cosmetics, and perfumes. If these products are used within the Southern African Customs

relative prices (healthy versus unhealthy products) and act as a signal for consumers to change purchase and consumption decisions. Furthermore, excise taxes compensate for the negative effects of the consumption of certain goods and are commonly used for correcting market failures and negative externalities¹⁴².

4.4 SSB tax as form of ‘sin tax’

In applying the definition of SSB tax it is clear that this particular levy resembles the constitution of the so-called ‘sin taxes’ (namely alcohol and tobacco). Sugar-sweetened beverage tax is akin to sin tax as both of these tax policies and designs’ share a common purpose; to promote health and decrease the consumption of the product being taxed; as well as to increase the revenue generated by the State. After establishing that SSB tax is a form of ‘sin tax’ we can now look at the experience of the other ‘sin taxes’ and based on this analysis what we can expect from the implementation of SSB tax in South Africa.

4.5 Currently instituted sin taxes in South Africa: Alcohol and Tobacco

4.5.1 Alcohol

4.5.1.2 The alcohol excise duty rate tax structure

A transparent alcohol excise duty rate structure exists in South Africa and indirect tax burdens are set which must be achieved and maintained, in order to ensure that the alcohol excise duties are increased above the inflation rate. The tax burden referred to is the total consumption tax burden which is calculated as follows: excise duties plus VAT¹⁴³. However in 2015, VAT was removed from the calculation of the excise tax burden for alcoholic

Union (SACU), they are subject to the payment of Ad Valorem Excise Duty, ‘ad valorem products’(29 September 2017), *SARS*, available at <https://goo.gl/UAtHo5>, last accessed 30 September 2017.

¹⁴² ‘A review of the Taxation of Alcoholic Beverages in South Africa’ (2014), *The Department of National Treasury of the Republic of South Africa* (discussion paper - Economics Tax Analysis Chief Directorate), 9, available at <https://goo.gl/ebjR11>, last accessed 20 September 2017.

¹⁴³ ‘How much more you will be paying for alcohol and cigarettes in 2017’ (22 February 2017), *BusinessTech*, available at <https://goo.gl/X2p15o>, last accessed 20 September 2017.

beverages¹⁴⁴. The excise duties regarding the specific categories of alcoholic beverages are at fixed “percentages of the weighted average retail prices” of the beverage¹⁴⁵.

4.5.1.3 The administration of alcohol excise levies

The excise tax is implemented through the Customs and Excise Act, and the specific levies and duties are contained in Schedule 1/Part 1/Section IV in Chapter 22 of the Customs and Excise Tariff. The latter provides specific details pertaining to the category or classification of beverage being taxed, the alcohol content level and percentage at which the beverage is taxed¹⁴⁶.

4.5.1.4 The objectives and the rationale of an excise tax on alcoholic beverages

The rationale behind the tax is two-fold: to generate revenue for the fiscus and in addition to combat the socio-economic externalities associated with the consumption of these products. The structure of the tax seeks to adjust alcohol beverage prices and to redirect the costs that are associated with the abuse of alcohol to the producers and consumers of the product. This allows the external costs that are associated with the abuse of alcohol to be internalized. The common alcohol-related externalities include *inter alia*; increased care health costs for the individual and the state, a loss of productivity and absenteeism in the work place, domestic violence and abuse, as well as motor vehicle accidents. As all consumers of products; consumers of alcoholic beverages base their economic decisions on the prices of such beverages. The alcohol excise tax policy aims to increase prices and excise duties of such products in the hope to curb the purchase and consumption of these products in order to improve the health of consumers and reduce the associated costs of alcohol abuse in society today¹⁴⁷.

¹⁴⁴ ‘Alcohol Taxation: South Africa’s Findings’ (2015), *Department of National Treasury Republic of South Africa*, 6, available at <https://goo.gl/EwVPmC>, last accessed 20 September 2017.

¹⁴⁵ Lorenzi P (note 140 above) 10.

¹⁴⁶ A comprehensive list of all excise rates pertaining to alcoholic beverages, wines and spirits are contained under Schedule 1/Part 1/ Section IV (Customs and Excise Tariff – 2017-09-15), Chapter 22, 107-113 read together with the Customs and Excise Act No. 91 of 1964, available at <https://goo.gl/U5ScMs>, last accessed 19 September 2017.

¹⁴⁷ Lorenzi P (note 140 above) 60.

4.6. Tobacco

4.6.1 The effect of tobacco excise tax

The total cigarette consumption has decreased by a third since 1991; or by more than 40% per capita. It was found that people who had given up smoking amounted to approximately 40% of the decrease in cigarette consumption. It was further found that amongst adults the smoking prevalence percentage decreased in the early 1990s from 33% to 27% in 2001. Furthermore, there has been approximately a 20% decrease in the average cigarette consumption per smoker in the past decade. An analysis of the smoking prevalence in South Africa over the past decade reveals that the real revenue generated by the government has increased by more than double, despite a 33% reduction in tobacco consumption. In 1994, it was found that real excise revenues increased by approximately 6% when the real excise tax was increased by 10%. As a result of stringent tobacco control legislation and illnesses due to years of tobacco and cigarette consumption; more and more people regard smoking as socially unacceptable. Therefore, in a decade there has been a significant reduction in tobacco consumption in South Africa, and the excise tax on tobacco has been the measure which has seen the biggest impact¹⁴⁸. An increase in excise taxes on cigarettes and tobacco is found to be a more effective measure; this is due to the reason that cigarettes and tobacco are relatively inelastic¹⁴⁹. The revenue derived from cigarette taxes in South Africa increased from an “estimated R1.5 billion in 1995 to just under R9 billion between the years 2008-09”. Due to the inelastic nature of the demand of cigarettes and tobacco, the government has implemented other measures which go hand-in-hand with the excise tax in order to reduce the consumption of tobacco and cigarettes. A few regulations in which the government have implemented are; prohibitory smoking in public and work places, to limit the exposure of secondary smoke to people, prohibitory advertisement of cigarettes, and an increase in the health warnings on the

¹⁴⁸ Van Walbeek C ‘Tobacco Excise Taxation in South Africa’, *World Health Organization*, 3-5, available at <https://goo.gl/g1mLv5>, last accessed 20 September 2017.

¹⁴⁹ An economic term used to describe the situation where the price of a good or service changes and the quantity demanded of the good or service remains unaffected. Conversely, a product is said to be elastic in nature if there is a small change in price and a large change in quantity demanded of the commodity. The price elasticity of demand is used to measure the relationship between the change in the price and the change in the quantity demanded of a particular commodity; this is often referred to as price sensitivity. Price elasticity of demand is calculated as follows: “Price Elasticity of Demand = % change in demand of quantity/ % change in price”, ‘inelastic’, *Investopedia*, available at <https://goo.gl/42D3z>, last accessed 21 September 2017. The consumption of ‘sin taxes’ represents an inelastic demand curve because the behaviour associated with these commodities is often addictive and habitual, and a large change in the price of the commodity results in the quantity demanded to be display a very small change. Therefore the demand for these commodities will always be high despite the increase in the price.

labels and packaging of products. Recently, the promotion of e-cigarettes and vaporized cigarettes has been supported by various stakeholders in the health industry, who promote these items as an alternative to the consumption of tobacco and cigarettes¹⁵⁰.

4.6.3 The administration of tobacco excise tax

The tax is implemented through the Customs and Excise Act. The specific levies and duties are contained in Schedule 1/Part 1/Section IV in Chapter 24 of the Customs and Excise Tariff. The latter provides specific details pertaining to the specific category or article description of the product, the unit in kilograms and the rates of the different levies imposed¹⁵¹.

4.6.4 The objective and the rationale of tobacco excise tax in South Africa

There are two main reasons for the implementation of tobacco and cigarette tax in South Africa. The first reason is to reduce the consumption of tobacco and cigarettes and to internalize the negative externalities associated with the consumption of tobacco and cigarettes; and the second reason is to generate additional revenue for the government. The externalities include *inter alia*; the health side effects such as lung cancer and tuberculosis, a loss of productivity in the work place, increased medical costs and insurance bills. The revenue generated by the government through the excise tax is used to compensate for the negative health externalities such as; the increased medical costs for individuals'; and an increase in the prevalence of tuberculosis which places an even greater burden on the State to provide access to affordable or free health care to people. One of the many roles of the government is to correct market failures within the economy, and the fiscal health intervention by government serves this purpose. The social and economic costs of tobacco and cigarette consumption are compensated by a higher level of excise tax; in the hope that the higher excise tax deters the consumption of these products. Therefore, the excise tax targets smokers and the tax has the effect to internalise the external costs associated with

¹⁵⁰ Black P & Lemboe CJ 'Cigarette taxes and smuggling in South Africa: causes and consequences' (2012 – working paper), *The Department of Economics and the Bureau for Economic Research at the University of Stellenbosch*, 4-5, available at <https://goo.gl/aWMbwy>, last accessed 21 September 2017.

¹⁵¹ Schedule 1/Part 1/ Section IV (Customs and Excise Tariff – 2017-09-15) Chapter 24, 117-119 read together with the Customs and Excise Act No. 91 of 1964 available at <https://goo.gl/U5ScMs>, last accessed 19 September 2017.

smoking; and as a further compensation the government receives revenue as the total externality of smoking will not completely be eliminated by the tax; but will only aid to reduce the consumption of tobacco and cigarettes.

4.7 Revenue generated from alcohol and tobacco excise tax

Retail prices increase as a result of increasing excise taxes by the government. This results in a decrease in the consumption of the product targeted by the excise tax; and a decrease in the revenue generated by the industry. The industry then responds by increasing the “net-of-tax price”¹⁵². The retail prices increase again and the government raises the excise tax to maintain the stipulated tax burden¹⁵³.

A substantial trend in the correlation existed between the increase in real excise taxes and the increase in real revenue between the years 1993-2011. From 1961-72 there was a decrease in real revenue when government increased real excise taxes. From 1972-84 the real excise taxes accordingly increased in correlation to the increase in real revenue. However between the years 1985-92 there was a considerable decline in the real excise tax rate and the real revenue rate. This clearly indicates a positive correlation between the two variables, each being dependant on the effect and behaviour of the other¹⁵⁴.

4.8 Concluding remarks

It is clear that the excise taxes on alcohol and tobacco commodities have increased the real revenue throughout the years in particular between the years 1993-2011. Both alcohol and tobacco excise taxes have shown a positive correlation in increasing revenue and deterring the consumption and purchase of such products. The regressive nature of a tax on these commodities is unnecessary for the purposes of this dissertation as the focal area is the effect

¹⁵² This is an accounting figure that is calculated by subtracting the taxes paid from the gross figure of a cash payment that is received from the sale of an asset, ‘net of tax’, *Investopedia*, available at <https://goo.gl/B39AZC>, last accessed 22 September 2017.

¹⁵³ Van Walbeek C ‘South African/SACU Experience with tobacco taxation: lessons learned and relevance for other SADC countries’ (2012) *School of Economics, University of Cape Town*, available at <https://goo.gl/sR5WTF>, 10-12, last accessed 22 September 2017. An example of this effect and chain of reaction is reflected in Appendix A, Figure 1.

¹⁵⁴ Ibid, 5. All attempts to obtain post 2011 analyses’ and statistics on the real excise and real revenue trend have been unsuccessful. However the above statistics are reflected in Appendix B, Figure 2.

of the excise tax on revenue in relation to the consumption and consumer behaviour towards these commodities; as a result of the increase in price of these products. Furthermore, it is apparent from the above analysis that the excise tax was coupled with other measures such as strict product labelling, restrictive advertising and educational campaigns which contributed to the overall success of an excise tax on both alcohol and tobacco. This is despite the excise taxes having been found to have had the biggest impact in the reduction of the consumption of these commodities; and this is informative as to what we can expect from SSB tax in South Africa. The next chapter deals with the assumed and estimated effects of an excise tax on SSBs on obesity and other NCDs as well as the expected revenue to be generated from SSB tax. The chapter also deals with the negative aspects surrounding the implementation of the tax and alternatives to the proposed health levy.

CHAPTER FIVE

5. The advantages and disadvantages of SSB tax

5.1 Introduction

This chapter explores the advantages and disadvantages associated with the implementation of the proposed SSB tax. The advantages include; the benefits to reduce the prevalence of obesity and other NCDs. The disadvantages include; job loss and the anticipated unemployment within the beverage industry. The alternatives to the proposed tax and the concept of earmarking will be discussed as a tool to ensure that the revenues generated by SSB tax will be used properly. The opposition by stakeholders and producers in the beverage industry is discussed as well as the concept of reformulation of SSBs. Finally, the regressive nature of the tax is discussed in light of the health benefits to be derived. The purpose of this chapter is to assess the potential positive and negative consequences of SSB tax.

5.2 Advantages

5.2.1 A reduction in the prevalence of obesity

In 2011 the South African Declaration on the Prevention and Control of NCDs was signed which by the year 2020 aims to reduce the number of people who are obese by 10%. Sugar-sweetened beverage tax could assist this 2020 target to be fulfilled by approximately 20%, which is even greater than the government anticipated¹⁵⁵. The WHO estimates obesity and other related diseases account for over 2.8 million deaths annually worldwide¹⁵⁶.

In an article entitled ‘The potential impact of a 20% tax on sugar-sweetened beverages on obesity in South African adults: a mathematical model’ the prevalence of obesity is analysed amongst adults in South Africa when a 20% tax is imposed on SSBs. The study provides evidence on the consumption of SSBs in South Africa and its relation to the contribution

¹⁵⁵ Manyema M *et al* (note 13 above) 8.

¹⁵⁶ Manyema M *et al* (note 13 above) 1.

of obesity¹⁵⁷. According to the study, in South Africa; there was an 11% increase in healthcare costs associated with moderate obesity and a 23% increase in healthcare costs associated with severe obesity. In the year 2013, the annual cost of cardio-vascular diseases was about R17.4-R21.3 billion. The study projected that there will be a 3.8% reduction in men and a 2.4% reduction in women in the prevalence of obesity. It is estimated that SSB tax will contribute to a reduction of obesity of 222 669 people in South Africa¹⁵⁸.

There is no ‘silver bullet’ to solve the obesity problem that faces our country; and simply implementing a tax seems easy to do but, other alternatives should be extensively considered¹⁵⁹.

5.2.2 A reduction of type 2 diabetes, excess sugar consumption and other NCDs

In a global initiative to reduce the premature mortality of NCDs, a Global Action Plan (GAP); for the Prevention and Control of NCDs 2013–2020; provides a variety of fiscal policy options to all member states of the WHO. The plan urges all member states to act coherently and coordinate fiscal policies to reduce the global prevalence of diabetes and other NCDs. Objective 3 of the GAP stipulates that member states should promote a healthy diet through the initiation of public health policies in order to curb the rise of obesity and diabetes. The GAP suggests that policies make healthier foods such as fruits and vegetables more affordable and to encourage physical exercise¹⁶⁰. The 2030 Sustainable Development Agenda includes a target that by 2030 there must be at least a one-third reduction in premature deaths caused from NCDs¹⁶¹.

As indicated in Chapter 2, the rate of SSB tax was accordingly reduced from 20% to 11% and empirical evidence by Priceless SA suggests that the tax will be most effective at a rate of 20%¹⁶². The WHO recommends that no more than 25 grams of sugar per day be consumed –

¹⁵⁷ Manyema M *et al* (note 13 above) 2.

¹⁵⁸ Manyema M *et al* (note 13 above) 5.

¹⁵⁹ Ismail A ‘Coca-Cola explains the sour side to a sugary tax on SSBs’ (12 December 2016), *Fin24*, available at <https://goo.gl/dqUsvq>, last accessed 28 September 2017.

¹⁶⁰ ‘Global Action Plan for the prevention and control of noncommunicable diseases 2013-2020’ (2013), *World Health Organization*, 32-33, available at <https://goo.gl/vIXrJ9>, last accessed 8 October 2017.

¹⁶¹ ‘WHO urges global action to curtail consumption and health impacts of sugary drinks’ (11 October 2016), *World Health Organization*, available at <https://goo.gl/q2hTN3>, last accessed 29 September 2017.

¹⁶² ‘Sugary Beverages Tax; Rates and Monetary Amounts Bill: public hearings’ (31 May 2017), *Parliamentary Monitoring Group*, available at <https://goo.gl/uXWJY6>, last accessed 29 September 2017.

this is equal to about 6 teaspoons¹⁶³. Therefore, if a child consumes one can of SSB daily, he is deemed to consume too much of sugar¹⁶⁴.

“The average South African consumes 260 servings of Coca-Cola per year, three times above the worldwide average”¹⁶⁵.

5.2.3 A reduction in the prevalence and incidence of diabetes

According to the study by Priceless SA above, every month in the public health care sector about 10 000 cases of diabetes are reported¹⁶⁶. According to global projections, in 2010 the prevalence of diabetes was 285 million and this figure is expected to double by 2035 to 592 million. Furthermore, this increase was most prevalent in South Africa and between the years 2000-09 the prevalence of diabetes in South Africa increased from 5.5% to 9%. The economic burden placed on the State caused by diabetes and other NCDs creates both direct and indirect consequences such as increased medical bills and absenteeism due to sickness. In South Africa between R1.1-2 billion US Dollars is projected to be spent on the treatment of diabetes and NCDs by 2030; and a major contributor to the total per capita sugar and energy consumption are SSBs¹⁶⁷. In an article entitled ‘Decreasing the burden of Type 2 diabetes in South Africa: the impact of taxing sugar-sweetened beverages’ the effect on the burden of type 2 diabetes in South Africa and the associated health costs was studied in relation to the imposition of a 20% tax on SSBs. The results of the study were as follows; SSB tax at the rate of 20% is estimated to reduce the incidence of type 2 diabetes cumulatively over 20 years by approximately 54 000 in men and 106 000 in women¹⁶⁸.

The above study provides evidence on how a single fiscal policy could prevent type 2 diabetes and other NCDs. The South African Department of Health identifies a fiscal policy as being the most cost effective mechanism to reduce the prevalence of obesity and NCDs. A

¹⁶³Sugary Beverages Tax; Rates and Monetary Amounts Bill: public hearings (note 162 above).

¹⁶⁴The average 330ml can of SSB contains eight teaspoons of sugar and each teaspoon contains four grams of sugar therefore amounting to thirty-two grams of sugar. Appendix C, Figure 3 indicates the added sugar content level in various sizes of Coca-Cola.

¹⁶⁵Sugary Beverages Tax; Rates and Monetary Amounts Bill: public hearings (note 162 above).

¹⁶⁶Sugary Beverages Tax; Rates and Monetary Amounts Bill: public hearings (note 162 above).

¹⁶⁷Manyema M *et al* (note 12 above) 2. The study analyses SSB tax at the rate of 20%, however the study at is worth exploring even if the estimation of the results obtained and the effect thereof differs; as SSB tax has accordingly been reduced to 11%. The study at hand is the first study in Africa to assess the burden of diabetes; and the impact of SSB tax as a proposed fiscal policy intervention.

¹⁶⁸Manyema M *et al* (note 12 above) 8.

fiscal policy provides an enabling environment and together with health campaigns can drive consumers to make healthier lifestyle choices¹⁶⁹.

5.3 Additional revenue generated for the fiscus

Sugar-sweetened beverage tax has indicated that it has the potential to develop substantial revenue for the fiscus. The effect of SSB tax during the nine year period in South Africa was as follows; between the years 1993-95 the excise tax rate per cent per litre was approximately 10.2 cents/litre to 13 cents/litre; the revenue generated during this period was approximately R175-R280 million. From the years 1996-99 there was a dramatic increase in the revenue generated due to an increase in the rate of tax. The rate was approximately 14 cents/litre in the year 1996 but then gradually decreased again to about 9.9 cents/litre. At the rate of 14 cents/litre the revenue increased to approximately R290 million, and gradually decreased to R245 million by the year 1999. Finally, between the years 2000-02 the rate of tax decreased substantially from approximately 9.8 cents/litre to 5.9 cents/litre. The revenue generated between the latter periods decreased from about R240-R125 million¹⁷⁰.

It is interesting to note the positive correlation that exists between the increase in excise tax and the substantial increase in revenue; especially during the most successful period of the tax; which is between the years 1996-99 respectively. If anything, looking forward Treasury can be hopeful to achieve this magnitude of a result once the revised SSB tax is to be implemented.

5.4 The standing of the WHO

The WHO suggests a tax of at least 20% or more on SSBs in order for SSB consumption to be proportionally reduced as well as reduce the net intake of calories¹⁷¹. The WHO supports the proposed implementation of SSB tax to reduce the consumption of sugar, the prevalence of obesity and other NCDs in South Africa. Furthermore, the WHO suggests that other

¹⁶⁹ Manyema M *et al* (note 12 above) 13.

¹⁷⁰ A representation of the experience of SSB tax in South Africa during the period of 1993-2002 is reflected in Appendix D, Figure 4. The electronic link to the source is currently unavailable, despite attempts to locate the link.

¹⁷¹ 'Fiscal policies for diet and the prevention of noncommunicable diseases' (2015), *World Health Organization*, 24, available at <https://goo.gl/U370Yj>, last accessed 9 October 2017.

interventions be implemented together with SSB tax such as; nutritional labeling on the packaging of SSBs; restrictions on the marketing of unhealthy beverage items to children; fruit and vegetable subsidies; and policies and campaigns directed towards healthcare. A commitment was made by South Africa together with other WHO member state to reduce the premature fatalities caused from NCDs; and hinder the rise of obesity and diabetes by 25% by 2025¹⁷².

5.5 Some preliminary issues

Before the disadvantages of SSB tax are analysed, two issues relevant to the importance of the analysis need to be considered. These are the reformulation of beverages and other alternatives to SSB tax.

5.5.1 Reformulation of SSBs

Reformulation is the reduction of the sugar content level contained in SSBs. The design of the tax imposed by Treasury for SSB tax provides an incentive to companies to reformulate their drinks and to reduce package sizes. This is due to the fact that smaller units sell at a higher price per litre resulting in a smaller proportional tax burden. It is estimated that Coca-Cola controls more than 80% of the market and the small producers' fear that SSB tax will affect them disproportionately compared to larger producers such as Coca-Cola. Glenn Sheppard the director of Little Green Beverages (LGB) has been an outspoken critic of SSB tax and expressed his concern over the four grams per 100ml tax threshold. He fears that small companies such as LGB will have a higher SSB tax burden as smaller companies sell their products in larger bottles at lower prices. Therefore, cheaper sugary drinks with the same sugar content levels as expensive brands will have a higher tax rate than the latter brand. Hence, reformulation is of paramount importance for smaller brands.

The industry together with the Department of Health has aimed to reduce the sugar content levels in soft drinks by 15% by 2018. Small producers face a financial burden as the tax will start at the factory in which the manufacturer will bear the expense before the consumer of

¹⁷² 'WHO supports proposed sugar-sweetened beverage tax in South Africa', *World Health Organization South Africa*, available at <https://goo.gl/uAdFbQ>, last accessed 29 September 2017.

the product; and it may be several months before the revenue is received by the small producers. It is unfortunate that small producers may face a predicament in which they cannot sell smaller packages due to certain setbacks; such as not having the global research and developmental capabilities as well as the expertise that Coca-Cola has within the industry¹⁷³.

The soft drink brands Coo-ee and Jive which belong to the Softbev Company have already embarked in the reformulation of their products and have reduced their sugar content levels by 30-50%. However none of the company's soft drinks have managed to become 'tax free' and fall below the 4 gram per 100 ml tax threshold. The company added that there is about 11 grams of sugar per 100ml of SSB and so a reduction of at least 7 grams of sugar per 100ml of SSB needs to be made. They further added that sweeteners may be used to compensate for the loss of added sugar in soft drinks¹⁷⁴. In the policy paper submitted by the SoftBev Company in response to the proposed SSB tax, the company has acknowledged that they have diversified their options of sugary beverages to light and sugar free options. The company has changed their portion servings to include single and multi serve pack choices to allow for consumer management and control of portion sizes. SoftBev includes the nutritional information contained on all SSBs; despite the current non-mandatory labeling requirement¹⁷⁵.

Coca-Cola has adopted a holistic strategy in terms of reformulation of their products. The strategy aims to reduce the sugar content in beverages over a period of time; and by the end of 2018 to reduce the average unit sugar content across their portfolio of beverages, by 22-24%. As mentioned this will be achieved by the reformulation of their products, smaller package sizes and the availability of zero-rated SSBs to consumers. The 2.5 litre size Coke has already been discontinued and the 2.25 litre Coke has been reduced to a 2 litre size bottle. Further efforts are underway to reduce this size to a 1.5 litre bottle; the 500ml bottle has been decreased to 440ml; and the 330ml can of soda has been reduced to 300ml¹⁷⁶.

The number of producers of SSBs that are able to reformulate their products will depend on whether the liability of the tax will be transferred to consumers; those producer's that are

¹⁷³Van Rensburg D 'Sugar tax: Reformulation games begin' (19 March 2017), *Fin24*, available at <https://goo.gl/8dDFAv>, last accessed 28 September 2017.

¹⁷⁴ Ibid.

¹⁷⁵ SoftBev Policy Paper (note 11 above) 3-4. The response by SoftBev pertains to the government's initial proposal of SSB tax at the rate of 2.29 cents per gram of sugar per 100ml of soft drink.

¹⁷⁶Ratshefola V 'Coca Cola South Africa reduces sugar across core brands' (20 June 2017), *IOL*, available at <https://goo.gl/DqaRdv>, last accessed 29 September 2017.

unable to reformulate their products, will pass the charge onto the consumer. Therefore, the importance of reformulation is a key area not only to reduce the sugar content in beverages; but to prevent the charge from passing to the consumer.

5.5.2 Alternatives to SSB tax

The alternatives to the tax include *inter alia*; eliminating all SSBs from schools; controlled and regulated advertising of SSBs to children under the age of 12 years old, a reduction in the size of SSB packaging, reformulation of SSBs and consumer awareness and educational programmes¹⁷⁷.

It is clear that there a number of alternatives to the proposed SSB tax, complimentary measures should be implemented together with SSB tax to ensure that the fiscal health objectives are successfully achieved.

5.6 Disadvantages

5.6.1 The industry reacts

The Healthy Living Alliance (HEALA) supports the tax on SSBs, however HEALA believes that the tax should be at a higher rate in order to curb the consumption of SSBs and viewed the tax as; a “mass prescription” for the diseases caused by obesity and other related NCDs in the country. The Consumer Goods Council of South Africa (CGCSA) believes that the taxation of SSBs alone will not reduce the increasing obesity rates in South Africa. The CGCSA has proposed that before Treasury embarks on a final decision to determine the nature of the tax; further extensive research, socio-economic assessment studies; and a total dietary intake study be undertaken. The South African Sugar Association (SASA) is pleased that Treasury is engaging in more consultations as they were left unsatisfied at the fact that there was insufficient public engagement in the process. Furthermore, the Standing Committee on Finance and the Portfolio Committee on Health urged Treasury to consult with the public and the industry properly¹⁷⁸.

¹⁷⁷ Ismail A ‘LEAKED: Coca-cola’s global sugar tax warfare’ (2 November 2016), *Fin24*, available at <https://goo.gl/1Gcvbf>, last accessed 28 September 2017.

¹⁷⁸ Smith C ‘#Budget2017: Tax on sugary drinks - health aid or budget band aid?’ (note 37 above).

Coca-Cola concedes that obesity is a problem in South Africa and on a global scale, however they are of the opinion that SSBs make up a very small proportion of the added sugars in an individual's diet¹⁷⁹. Coca-Cola further criticizes Treasury's Policy Paper as the policy claims that SSB tax will result in an average daily reduction of calories by 36KJ (8.6 calories); and that obesity rates will decrease from 13.5% for men to 13.0%; and from 42.0% for women to 41.2%. Coca-Cola argues that this result is uncertain and as little as 9KJ (2 calories) will be reduced daily¹⁸⁰.

In an online article entitled 'A stealth tax, not a health tax' by the South African Institute of Race Relations (IRR); the IRR is of the critical opinion that the proposed 20% tax will have no impact to curb obesity and NCDs in South Africa. Furthermore, the IRR criticizes the 'mathematical model' developed by Professor Karen Hofman of WITS University as based on assumption and not real evidence. The IRR argues that international experience indicates that due to a higher tax, consumers often shift to cheaper brands or to other sugary products. Finally, the IRR believes that the motive of SSB tax is to generate revenue; and suggests that the revenue generated through the tax be directed towards educational campaigns and health interventions. Furthermore, the IRR suggests that the money generated through SSB tax be ring-fenced; otherwise the revenues generated risk being used in other non-health related initiatives¹⁸¹.

BevSA argues that one food item cannot be blamed for the country's obesity problem. The industry proposes promoting light and zero-sugar options, portion control, and calorie consumption reduction per person per day. Another argument against the proposed SSB tax is that the government should not have the 'right to choose' what beverages a person consumes; and that instead SSB tax, the government should make healthier foods more affordable. By the year 2020, BevSA has embarked on a campaign that aims to supersede the proposed impact of SSB tax stipulated in the Policy Paper by Treasury; that seeks to reduce sugar consumption by 36KJ; and to reduce this figure by more than double to 59-75KJ per capita. Coca-Cola supports this campaign and has committed to work together with BevSA and the government to achieve these goals¹⁸². BevSA is fearful that SSB tax will create uncertainty

¹⁷⁹ Ismail A 'Coca-Cola explains the sour side to a sugary tax on SSBs' (note 159 above).

¹⁸⁰ Coca-Cola Policy Paper (note 8 above) 3. The response by Coca-Cola pertains to the government's initial proposal of a tax at the rate of 2.29 cents per gram of sugar per 100ml of soft drink.

¹⁸¹ Omarjee L 'Sugar tax is actually a stealth tax, claims IRR' (15 September 2016), *Fin24*, available at <https://goo.gl/tv6b3q>, last accessed 28 September 2017.

¹⁸² Coca-Cola Policy Paper (note 8 above) 4.

and instability within the industry; and that the tax will deter international investments and hinder the financial growth of the economy¹⁸³.

In a study entitled ‘The impact of a sugar tax on SSBs on the prevalence of obesity’ the Manyema *et al* study¹⁸⁴ discussed above is criticized. There is some doubt surrounding the ‘meaningful impact’ of a 20% tax to reduce the average BMI per person, by a 36KJ energy intake per day; in order to reduce the prevalence of obesity. Econex replicated the Manyema *et al* model and substituted the 36KJ daily energy intake as proposed by the Manyema *et al* study; with a 59-75KJ energy reduction in the daily intake per person¹⁸⁵. Accordingly, Econex altered these values to determine whether the assumptions made by the Manyema *et al* study prove to be true¹⁸⁶. The study by Econex found that the prevalence of obesity will decrease by 5.30% (2.5% higher than the maximum decrease cited in the Manyema *et al* study) by a reduction of 59KJ per capita per day. The study also found a 6.74% reduction in the prevalence of obesity (a 4% higher decrease than estimated in the Manyema *et al* study) when a 75KJ reduction per capita per day is applied. The Econex study therefore supports the commitment by BevSA to the government that a 59-75KJ energy consumption reduction will be more of an effective mechanism to reduce the prevalence of obesity in South Africa than SSB tax. The study at hand indicates the uncertainty of the health impact illustrated in the Manyema *et al* study¹⁸⁷.

Tongaat Hulett supports the objective of the government to reduce the incidence of obesity and other NCDs in South Africa; as well as the consumption of excess sugar. However they do not support the Health Promotional Levy instituted by government; and therefore they do not support the ideology that SSB tax will reduce the prevalence of obesity and other NCDs. The sugar industry provides thousands of jobs as sugar cane farming is rife in rural communities in South Africa. The producers of SSBs will embark on reformulation of their products; and will opt for other sweeteners to add sweetness to their drinks. Tongaat Hulett fears that this will potentially lead to job losses and the closure of sugar mills. Furthermore, they believe that the sugar industry will bear the brunt the most by the proposed implementation of SSB tax. In addition to the negative impact of the tax, Tongaat Hulett is of

¹⁸³ BevSA Policy Paper (note 9 above) 3. The response by BevSA pertains to the government’s initial proposal of a tax at the rate of 2.29 cents per gram of sugar per 100ml of soft drink.

¹⁸⁴ Manyema M *et al* (note 13 above).

¹⁸⁵ Dr Armstrong P (note 21 above) 2.

¹⁸⁶ Dr Armstrong P (note 21 above) 5.

¹⁸⁷ Dr Armstrong P (note 21 above) 7-8.

the opinion that future increases in the rate of SSB tax is more than likely, if obesity rates do not deteriorate. The rate of SSB tax will also have to be increased annually to remain above the inflation rate¹⁸⁸. In a submission made by LGB, the company fears that the proposed tax will create dire consequences for the economy and lead to the instability of the company which operates as a small-medium sized company. The company fears that sales will be affected and even exceed the cost of production. According to the policy paper submitted by LGB, the unemployment rate is currently 26.7% in South Africa; and the company believes that this will place an even greater financial burden on the State. Furthermore, the company suggests a socio-economic impact assessment (SEIA) be carried out to analyze the impact and the effectiveness of the proposed tax. An interesting submission made by LGB is that there are four main categories of ‘obesity and overweight’ according to the National Strategy, and sugar consumption is just one of these categories. The three other categories include; insufficient knowledge and physical inactivity, as well as poorfeeding practices in early childhood. Therefore, SoftBev urges the government to bear this consideration in mind before the implementation of SSB tax in South Africa¹⁸⁹.

The SoftBev Company fears that SSB tax will have debilitating effects for beverage industry, the economy and for the company. They are fearful that the volume of sales will decline by 25-30%; and that this will adversely affect the company as they are a small-medium sized business. SoftBev fears that the tax will pave a pathway for unemployment as jobs within the company and industry will be lost; and that due to the decline of expected sales, this could lead to the closure of the business. The company concedes that obesity is a problem facing the country and urges the government, industry and stakeholders to take collective action to reduce the rise of the disease¹⁹⁰.

It is essential to create a win-win situation for all the role players, employees and consumers alike that will be affected by the implementation of SSB tax; and the government and the industry should work collectively to promote the health of the nation.

¹⁸⁸Mohale M ‘We oppose proposed tax on Sugar Sweetened Beverages – Tongaat Hulett’ (9 July 2017), *Political Analysis South Africa*, available at <https://goo.gl/PwNVkg>, last accessed 29 September 2017.

¹⁸⁹LGB Policy Paper (note 10 above) 2-24. The response by LGB pertains to the government’s initial proposal of a tax at the rate of 2.29 cents per gram of sugar per 100ml of soft drink.

¹⁹⁰SoftBev Policy Paper (note 11 above) 3-4.

5.6.2 Job losses within the industry

The SASA estimated that there would be a total job loss of ‘3 990 permanent and 6 300 seasonal jobs’. Mapule Ncanywa, the executive director of BevSA estimated that between 62 000-72 000 jobs in the industry were at risk; however Treasury only indicated that 5000 jobs would be lost once the tax is implemented¹⁹¹. The chairperson of Coca-Cola Beverages Africa, Phil Gutsche warned that the proposed 20% tax on SSBs could result in a job loss of 60 000 workers within the beverage industry¹⁹². Furthermore, BevSA fears that the competitiveness of the non-alcoholic beverage industry will be undermined as the smaller producers of SSBs will be forced to exit the competitive market. According to BevSA the price increase will lead to a 33% drop in SSB volumes and result in a decline of 23% of revenues which amounts to R13 billion in monetary terms. BevSA argues that the tax will result in a loss of revenues which amounts to R3.1 billion per annum and therefore any revenues generated by the proposed SSB tax will be offset by this amount. In essence this means that South Africa’s gross domestic product (GDP) will be reduced by R14 billion, and this has the potential to cause irreversible economic harm and place a disproportionate burden on lower-income households¹⁹³. Finally, according to BevSA, the non-alcoholic beverage industry contributed to South Africa’s GDP by R60 Billion; and this amounted to 1.6% of the total GDP in 2015. This indicates the importance of the role of the beverage industry in South Africa¹⁹⁴. Therefore, it is apparent that the main concern of the beverage industry is significant job losses.

The economic cost of SSB consumption to reduce the prevalence of obesity and other NCDs needs to be weighed against the potential loss of jobs and revenue in the industry. An argument can be drawn between the health of the nation and job losses within the industry, but the question is where do we draw the line, and how can we strike a fair balance between these two issues? The government needs to be mindful of this and protect the different interests at stake.

¹⁹¹Ismail A ‘Coca-Cola explains the sour side to a sugary tax on SSBs’ (note 159 above).

¹⁹²‘Sugar tax alone can’t solve health problems – expert’ (25 September 2016), *Fin24*, available at <https://goo.gl/znrZxY>, last accessed 7 August 2017.

¹⁹³ BevSA Policy Paper (note 9 above) 3.

¹⁹⁴ BevSA Policy Paper (note 9 above) 4.

5.6.3 The regressive nature of the tax

The tax is regressive in nature as the poor are more likely to be affected as they often have poor access to affordable health care and services; and therefore they face a disproportionate burden of illnesses. BevSA argues that the tax is regressive and will disproportionately affect lower-income earning groups in society. BevSA refers to the Policy Paper by Treasury, which states that the effect of the tax on low-income groups justifies the implementation of the tax; as the Policy Paper indicates that poorer people are more obese; and spend more of their household budget on SSBs, compared to those more affluent in society. BevSA is doubtful of this contention and urges the government to conduct a full SEIA on the proposed tax¹⁹⁵.

Due to the lack of access to proper healthcare by poorer people in South Africa, many people often live with undiagnosed cases of NCDs which leads to premature mortality. The health inequality facing the nation is rife and a fiscal policy could aid the government to narrow the apparent inequality that exists. Accordingly, the revenues generated from the tax can be invested to provide better access to healthcare¹⁹⁶.

5.7 Concluding remarks

The evidence linking the consumption of SSBs to the risk of chronic diseases is clear. Due to the rise of the burden of diseases, and the escalation of health care costs that are related to a poor diet intake; there is an urgent need for solutions to these issues. Therefore, SSB tax justifies the government's right to recoup the costs expended on obesity and NCDs annually. The precise effect of the tax is difficult to predict until SSB tax is implemented and extensively studied; this is also due to the fact that the tax rate has since been reduced to 11%. Furthermore, the government should create economic opportunity instead of economic instability and risk for the country due to the proposed implementation of the tax. The next chapter analyses the tools for an effective fiscal policy design which is paramount to the success or failure of the proposed tax.

¹⁹⁵ BevSA Policy Paper (note 9 above) 14.

¹⁹⁶ According to the Bill of Rights, every citizen has the right to access proper healthcare and services, Constitution (1996) (note 34 above), section 27(1) (a), Chapter 2, 12.

CHAPTER SIX

6 The key components to an effective tax design

6.1 Introduction

In order to ensure that an effective fiscal policy is implemented by the government, the design of the fiscal policy must be capable to address and achieve the objectives to the policy. The Davis Tax Committee's key components to a 'good' tax design will be analysed in this chapter, as well as other principles suggested by the WHO and those principles of an effective tobacco tax design; which may be adopted and applied to the proposed SSB tax. Finally, the concept of earmarking will be discussed as a tool to ensure the success of the fiscal policy.

6.2 The key components of a 'good tax design' according to the Davis Tax Committee (DTC):

In an analysis by the DTC, the committee analyses and outlines the principles for a 'good tax system' for excise taxes in South Africa. The assessment of the current South African tax system is analyzed with emphasis on the principles of a good tax system; which merely act as a guide to identify key areas in the tax systems that require reform. This will then allow the DTC to make recommendations pertaining to these areas. The DTC has a mandate that focuses on the role that the South African tax system contributes to the country and how the objectives of each tax policy may be structured in order for these objectives to be achieved¹⁹⁷.

The DTC describes the following principles that underpin a 'good' excise tax system¹⁹⁸:

¹⁹⁷ 'Macro Analysis of the tax system and inclusive growth in South Africa' (2016 – executive summary of the final report), *The Davis Tax Committee*, 2, available at <https://goo.gl/1DzskM>, last accessed 12 October 2017.

¹⁹⁸ 'Macro Analysis of the tax system and inclusive growth in South Africa' (2016 –Final Report), *The Davis Tax Committee*, 95-96, available at <https://goo.gl/gQpjU7>, last accessed 13 October 2017.

1. Economic and administrative efficiency:

The Report describes this as the increase in the price of certain commodities such as alcohol and tobacco in order to reduce the demand of these socially harmful commodities.

2. Equity and fairness:

Commodities such as alcohol, tobacco and SSBs make up a large portion of the monthly bill of a poor household; even though they may consume far less of these commodities than a more affluent household. The DTC describes specific excise duties based on quantity rather than price therefore contributing to the regressive nature of the tax; which was established in the previous chapter. The effect of this is as follows; if an impoverished individual purchases a 750ml litre of wine with an excise duty rate of R2.48 (as per the excise duty rate in 2014) for R20; the impoverished individual will be subject to a 12% tax rate. However, if a wealthier individual purchases the same bottle of wine at the same excise rate for R200, such individual will only be incur an excise tax of 1%.

3. Transparency and certainty:

The DTC describes the excise duty schedule as fairly transparent, and stipulates that the tax burden must be adjusted annually to remain above the inflation rate.

4. Flexibility and buoyancy:

The DTC describes the commodities alcohol and tobacco as being relatively inelastic in price as the demand of the commodity often remains unresponsive to price changes¹⁹⁹. In order to determine the elasticity of the demand of as SSBs, the response of consumers to the price increase will have to be determined. Since the tax has not yet been implemented, it is difficult to assume the elasticity or inelasticity of SSBs. Treasury assumes that there will be a substantial reduction in the demand of SSBs as the price of these goods are increased, therefore a demand that is elastic in nature. The adverse effects in terms of loss of jobs and economic growth will be lower as will the expected health outcomes if the demand of SSBs is

¹⁹⁹ The inelastic demand of the price increase of alcohol and tobacco is discussed in Chapter 4.

inelastic; and accordingly the health objective of the tax will not be achieved despite revenue generated by the fiscus. The state must be cautious to ensure that the excise tax on SSBs is used for its intended purpose; to curb the excessive consumption of SSBs in order to decrease the prevalence of obesity; and not as a tool to generate revenue²⁰⁰.

6.3 The key components to an effective fiscal policy design according to the WHO

According to the WHO, generally SSBs are elastic in nature and consumers that consume these products on a daily basis will be more responsive to a price increase; and amongst low income earning consumers and youngsters, the price elasticity tends to be higher²⁰¹. The WHO stipulates certain criteria to consider before the implementation of a fiscal policy. These are; the type of tax to apply; the structure and the scope of the tax; and what the implications of the tax thereof are. The WHO further suggests that those countries that have an effective tax administration system; tax SSBs on the sugar content (gram/litre) and those countries with a weak tax administration system to use a volume-based approach. Furthermore, the WHO suggests that all fiscal health policies be designed carefully, in order to prevent consumers for substituting their favourite SSB for another product that is just as unhealthy or opt for a cheaper brand of SSB. The tax needs to be steered towards healthier substitutions and alternatives in order to minimize the effect of adverse health outcomes²⁰². Furthermore, the WHO emphasizes the importance of defining the products to which the tax applies. A nutrient profile model may be used as a fiscal tool to provide a structure for the nutritional criteria that subject to taxation. The concept of a nutrient profile is the classification of the nutritional composition of the food or beverage items which are harmful to consume.²⁰³

6.4 Earmarking of revenues

Earmarking is a fiscal tool used in many countries that use the revenues generated from tax towards the promotion of health in the country. As discussed in chapter 5, the nature of SSB

²⁰⁰ Fourie H, Dr Rossouw R & Professor Theron N 'Economy-wide implications of the proposed tax on sugar-sweetened beverages (SSBs)' (2016 - Research Note 42), *Econex*, 4-5, available at <https://goo.gl/EDfXqn>, last accessed 16 October 2017.

²⁰¹ Fiscal Policies for the Diet and Prevention of Noncommunicable Diseases (note 171 above) 12.

²⁰² Fiscal Policies for the Diet and Prevention of Noncommunicable Diseases (note 171 above) 19-21.

²⁰³ Fiscal Policies for the Diet and Prevention of Noncommunicable Diseases (note 171 above) 22.

tax has the potential to be regressive, however earmarking of revenues can be used to divert funds to a healthy cause; such as subsidising fruit and vegetable subsidies and various other health campaigns. The overall taxation process is made more transparent, which will improve the understanding and acceptability of the tax amongst the public and private sphere²⁰⁴. In order to optimize the government's health policy, earmarking may serve as an impressive and effective tool to distribute funds where they are most needed; and avoid the revenues generated from SSB tax from remaining in the consolidated government account. The government needs to ensure the optimisation of the health policy; and the taxation of SSBs manifests in such a manner, that the revenues generated from SSB tax are not misappropriated. Therefore, the government should be required to be steadfast in their approach to the operation and efficiency of the tax.

In an article entitled 'ten principles of effective tobacco tax policy'²⁰⁵ key areas to the design and the implementation of an excise tax policy are highlighted. These principles can be adopted and applied to SSB tax design. The key areas are as follows:

1. SSB tax should be presented for the best interest of the public and not simply to generate revenues:

It is important that the public is informed about the objectives of the health policy. In South Africa, the public lack confidence in the ability of the government to distribute the revenues collected to where it is most needed; therefore the public at large will be resistant regarding the increase in the price of SSBs. In the policy paper by Treasury, it is indicated to the public about the importance and necessity of the re-introduction and implementation of SSB tax²⁰⁶.

2. The increase in the rate of tax should be substantial to reduce the consumption of SSBs:

Sugar-Sweetened beverage tax should be sustained for a long period of time to reduce the consumption of SSBs in South Africa. If it is found that the sale of SSBs is relatively inelastic then a poor outcome would result from the tax; the tax increases need to be significant and

²⁰⁴ Fiscal Policies for the Diet and Prevention of Noncommunicable Diseases (note 171 above) 23.

²⁰⁵ Bredenkamp C, Iglesias RM, Kaiser KA 'Ten principles of effective tobacco tax policy' (2015), *World Bank Group*, 1-2, available at <https://goo.gl/5nRdRh>, last accessed 17 October 2017.

²⁰⁶ National Treasury Policy Paper (note 3 above) 5-11.

large enough to create the desired effect; and not be just a small episodic increase in the tax rate.

3. A specific excise tax structure is preferred compared to an ad valorem tax structure:

Specific excise taxes are based on quantity whereas ad valorem taxes are based on valuations by declaring and calculating the specified tax. As mentioned in chapter 2, South Africa is following a specific excise tax structure and this is highlighted in Treasury's policy paper²⁰⁷.

4. The tax rate should be unitary amongst all levels to ensure the ease of administration and the collection of revenues to be invested in health:

Put simply, every sugary beverage within the scope of the tax is unhealthy and potentially harmful therefore all beverages within this scope should be taxed at one specific rate. The ranking of beverages will equate to one beverage being more 'healthier' than the other; and will have little effect on the intended objective of the tax; therefore a unitary rate on all SSBs will be more effective.

5. The tax rate should be adjusted annually to remain above the inflation rate:

Real revenues should avoid being eroded by the inflation rate. Therefore, the government must ensure that the specific rate of tax is automatically adjusted annually to avoid this from occurring. The policy paper by Treasury indicates that the rate of tax will be adjusted annually to adjust to inflation²⁰⁸.

6. A market analysis should be performed before the tax reform is undertaken:

This will ensure the optimisation of the overall tax design. A few aspects that need to be researched are; the market share of different beverages, the costs involved in production and reformulation; and the total amount that the government collects from the beverage industry. The government should be independent and collect their own data without having to rely on the beverage industry to provide the statistics and data needed to analyse the tax reform.

²⁰⁷ National Treasury Policy Paper (note 3 above) 15.

²⁰⁸ National Treasury Policy Paper (note 3 above) 16.

7. The government must ensure continuous monitoring and evaluation of the tax post reform and implementation of the tax:

The government must ensure measures are enforced prior to the implementation of the tax to ensure that the tax post implementation is monitored; and regular price and revenue data is collected.

6.5 Will SSB tax be effective in South Africa?

In light of the above analysis, it is clear as to how to implementation of SSB tax will occur. The price of SSBs is increased in order to deter the purchase and consumption of such products. Therefore, people will consume fewer calories due to the decline in sales of SSBs. Hence a reduction in the prevalence of obesity and other NCDs; and Treasury's fiscal objectives will be achieved²⁰⁹.

6.6 Concluding remarks

International organisations' such as the WHO are supportive and committed to assist governments' around the globe to design a tax policy that has the best interest of the public in mind. The tax policy should satisfy government's health objectives, however in order to accomplish this, the State requires revenues; therefore the increase in price of SSBs by attaching a levy is a cost-effective method to generate funds to invest in health care for the nation. Therefore, a dual goal must be created and incorporated in the tax design of the policy.

²⁰⁹ Snowdon C (note 23 above) 1-2. Appendix E, figure 5, depicts the chain of events that are supposed to occur upon the implementation of SSB tax. However, these events are assumptions made by Treasury. If one of the links in the chain of events breaks; for example due to the event of negative substitution; such as consumers' purchasing other unhealthy products such as chocolates; this would pose a threat to the overall success of the tax.

CHAPTER SEVEN

7 The need for further research and final concluding remarks

7.1 Conclusion

It is evident that SSB tax will effect poor households and result in a substantial number of job losses, which could pose a threat to our already unstable economic climate. However, despite the criticism by the opposition of members from the beverage industry that the tax will be ineffective to reduce to the prevalence of obesity and other NCDs; I am confident that the NCOP will adopt the Rates and Monetary Amounts Bill in relation to the ‘health promotion levy’ without amendment; as this will save the lives of millions of South Africans. The tax should be implemented for a three-five year period in order to effectively monitor and evaluate the effect of the tax on the reduction of the prevalence of obesity and other NCDs. Ultimately consumers will only behave according to how the campaigners want them too, therefore the success of model’s such as the model created by the Manyema *et al* studies²¹⁰ is uncertain. In my view a single measure such as SSB tax will not be as effective; as compared to a menu of policy options as suggested by the WHO. Consumer awareness programmes, a food rating system, food labeling and educational campaigns must be implemented together with SSB tax to create a sound fiscal health policy. Tobacco products are marketed, advertised, packaged and regulated to inform consumers’ about the negative health effects that arise as a consequence of smoking. Similarly, SSBs can adopt the same mechanisms and food labeling standards to alert consumers as to the harmful health consequences associated with the consumption of these products.

The ‘traffic light’ food rating system developed in the UK has been found to be effective to allow consumers to make an informed decision before purchasing a product. The symbols contained on the labels of products are traffic light indicators; using the colours amber, red and green to indicate if a product has a low, medium or high; fat, salt and sugar concentration. The purpose of this system is to allow consumers to make healthier food choices as the colour signals indicate if a product is unhealthy (red), healthy (green), or moderate (amber). Therefore, consumers are able to make comparisons and compare similar products in stores before purchasing a particular product. A system like this would be

²¹⁰ Manyema *et al* (note 12 & 13 above).

beneficial to South Africans as this type of food rating system is easy to understand by all persons no matter their level of literacy. As mentioned throughout this paper, obesity and other NCDs place an economic burden on the economy; and negative externalities such as absenteeism from the workplace will threaten the future workforce. Taxpayers must be in good health today in order to boost the economy tomorrow. A robust and holistic approach to the rising problem of sugar consumption, obesity and other related NCDs must be adopted; and SSB tax might be the nation's best option²¹¹. The taxation of alcohol and tobacco commodities does not eliminate heart diseases and other illnesses that are associated with the consumption of these commodities; but nevertheless are effective fiscal policies. Similarly, the prevalence of obesity is unlikely to be reduced by the implementation of a single fiscal policy intervention; therefore a comprehensive package of policies is required to address the problem²¹².

The approach to the fiscal policy needs to be multifaceted if the policy is to impact the obesity epidemic in South Africa. In my view the proposed fiscal policy is the right way to go as the tax has the potential to alleviate the pressure on our already fragile health system. The tax will also help to achieve the commitment made in The South African Declaration on the Prevention and Control of NCDs which was signed in 2011; to reduce the number of people that are overweight or obese by 10% by the year 2020. Since obesity is now classified as an epidemic, a surveillance system should be well established to respond to the increasing obesity rates, analyse the risk factors associated with the disease; and to assess certain measures to prevent the further increase of the disease. Therefore, the importance of a surveillance system is critical to the overall management of obesity and other NCDs. It is one thing to reduce the percentage of people that are overweight and obese but in order to maintain that percentage and prevent a further increase requires a stable and strategic surveillance and monitoring system. In order to meet the targets set out in the South African Declaration for the prevention and control of NCDs, baselines must be established to monitor the progress of the implementation and the effect of the tax²¹³. The health system must be monitored to ensure that the system operates efficiently and effectively in order to achieve the goals of the fiscal health policy intervention. Action plans will play a key role to address the

²¹¹ 'Traffic-light food labelling' (2008), *Faculty of Public Health*, 1, available at <https://goo.gl/sPcvqv>, last accessed 25 October 2017.

²¹² Brownell KD, Farley T, Willett WC, Popkin BM, Chaloupka FJ, Thompson JW & DS Ludwig, 'The Public Health and Economic Benefits of Taxing Sugar-Sweetened Beverages' (2009), *The New England Journal of Medicine*, (361), 1602-1604, available at <https://goo.gl/Etj43>, last accessed 29 September 2017.

²¹³ Strategic Plan for the Prevention and Control of NCDs (note 24 above) 48.

defects within the health system in order to rectify any shortcomings in the health system. In the event that the health outcomes should not be achieved or improved, in-depth evaluations may be established to assess the reasons for the lack of improvement and the necessary changes which will need to be made in order to achieve better health outcomes²¹⁴.

The advertising and marketing of SSBs is aggressive in nature and excess consumption of these products is perceived to be the social norm. Therefore, sugar should be marketed in such a way that it should be portrayed to be as harmful as tobacco products. The challenges surrounding the tax on SSBs are anticipated; however strategic solutions must be developed to overcome these²¹⁵. The government must conduct a proper SEIA and mitigate against the dramatic job loss anticipated within the beverage industry. Furthermore, supplementary measures should be implemented to work hand-in-hand with the proposed tax to ensure the maximum success of SSB tax in South Africa. In the event that the positive effects outweigh the potential negative effects of the proposed tax, I believe that the nation will have much to gain. A healthier nation means a stronger and healthier workforce, which in turn means a stronger economy.

7.2 The need for further research

In order to assess the cumulative effect of the tax on SSBs, the effect of the consumption and the daily calorie intake of SSBs must be thoroughly investigated. The quantification of the levels of SSB consumption in South Africa has been insufficiently performed; therefore further research is required to determine the trends in the consumption of SSBs in children and adults. The projected increase in SSB sales and consumption in relation to obesity need to be further investigated in order to evaluate the future impact of SSB tax. Before the implementation of programmes aimed at combating NCDs and the prevalence of obesity in South Africa, thorough research is required to be undertaken in order to generate substantial scientific research²¹⁶. In order to effectively conduct research the government, academic and research institutions need to work simultaneously to ensure that research is carried out in the right areas and to monitor the overall effect of the fiscal policy on health. Therefore in order

²¹⁴ Strategic Plan for the Prevention and Control of NCDs (note 24 above) 48.

²¹⁵ Myers. A *et al* (note 2 above) 111.

²¹⁶ Strategic Plan for the Prevention and Control of NCDs (note 24 above) 49.

to address the current evidence gap, thorough research and evaluations are needed to be conducted at a national and socio-economic level.

POSTSCRIPT

A recent online article provides clarification on the registration of commercial and non-commercial manufacturers and the payment of the sugary beverages levy. The article indicates that commercial manufacturers of sugary beverages must register and pay the sugary beverages levy; and non-commercial manufacturers must register, but are excluded from the payment of the sugary beverages levy²¹⁷. As indicated, due to the exclusion of non-commercial manufacturers in South Africa from the sugary beverages levy; it may be assumed that this is Treasury's attempt to address the 'small producer' exemption to allow non-commercial manufacturers of sugary beverages to escape taxation from imposition of the sugary beverages levy. Furthermore, the South African Revenue Services has indicated that commercial and non-commercial manufacturers are expected to begin the licensing and registration process from February 2018²¹⁸.

On the 5th of December 2017, the NCOP passed the sugary beverages tax which forms part of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill; and the tax will come into effect on the 1st of April 2018²¹⁹. On the 14th of December 2017, The Rates and Monetary Amounts and Amendment of Revenue Laws Bill was passed as law; and is now entitled The Rates and Monetary Amounts and Amendment of Revenue Laws Act No. 14 of 2017²²⁰. I am pleased that Parliament has passed the tax in order to reduce the prevalence of obesity and other NCDs in the country. This indicates the importance of the health of the nation and the seriousness of the obesity epidemic in South Africa. It will be interesting to note the effect after the implementation of the tax, and how the revenues generated will be used towards the improvement and promotion of the health of all South Africans.

²¹⁷ Staff Writer 'SARS will begin collecting sugar tax from 1 April 2018' (15 December 2017), *Business Tech*, available at <https://goo.gl/a8THnN>, last accessed 15 December 2017.

²¹⁸ Note 217.

²¹⁹ Cullinan K 'Parliament finally passes sugary drinks tax' (5 December 2017), *Health 24*, available at <https://goo.gl/PpiRLt>, last accessed 5 December 2017.

²²⁰ 'Legislation' (2017), *Parliament of the Republic of South Africa*, available at <https://goo.gl/2kFLKG>, last accessed 15 December 2017. The Rates and Monetary Amounts and Amendment of Revenue Laws Act No.14 of 2017 which contains the Health Promotion Levy may be found at 44-48, available at <https://goo.gl/G3dZEZ>, last accessed 15 December 2017.

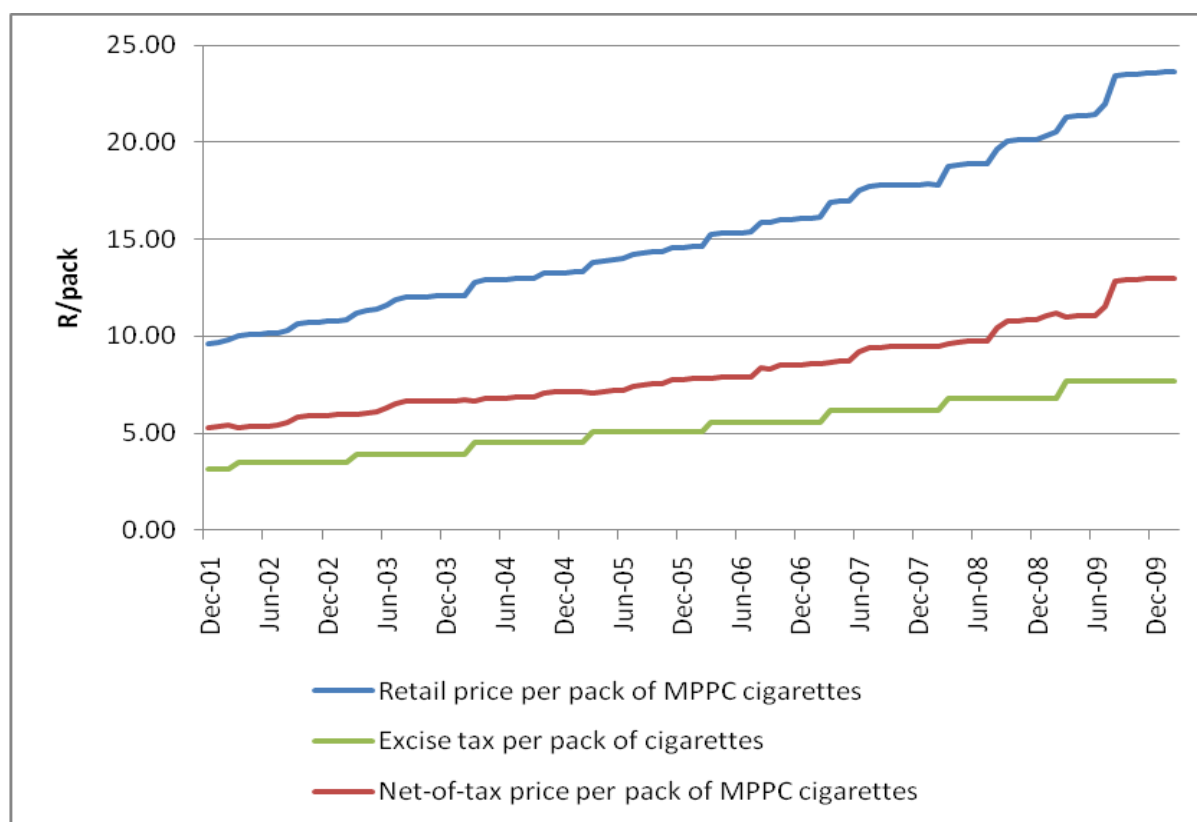


Figure 1 – *The quantum of the excise tax determined by the net-of-tax price*

Source: Van Walbeek C ‘South African/SACU Experience with Tobacco Taxation: Lessons Learned and Relevance for other SADC countries’ (2012), *University of Cape Town*, available at <https://goo.gl/sR5WTF>, 11.

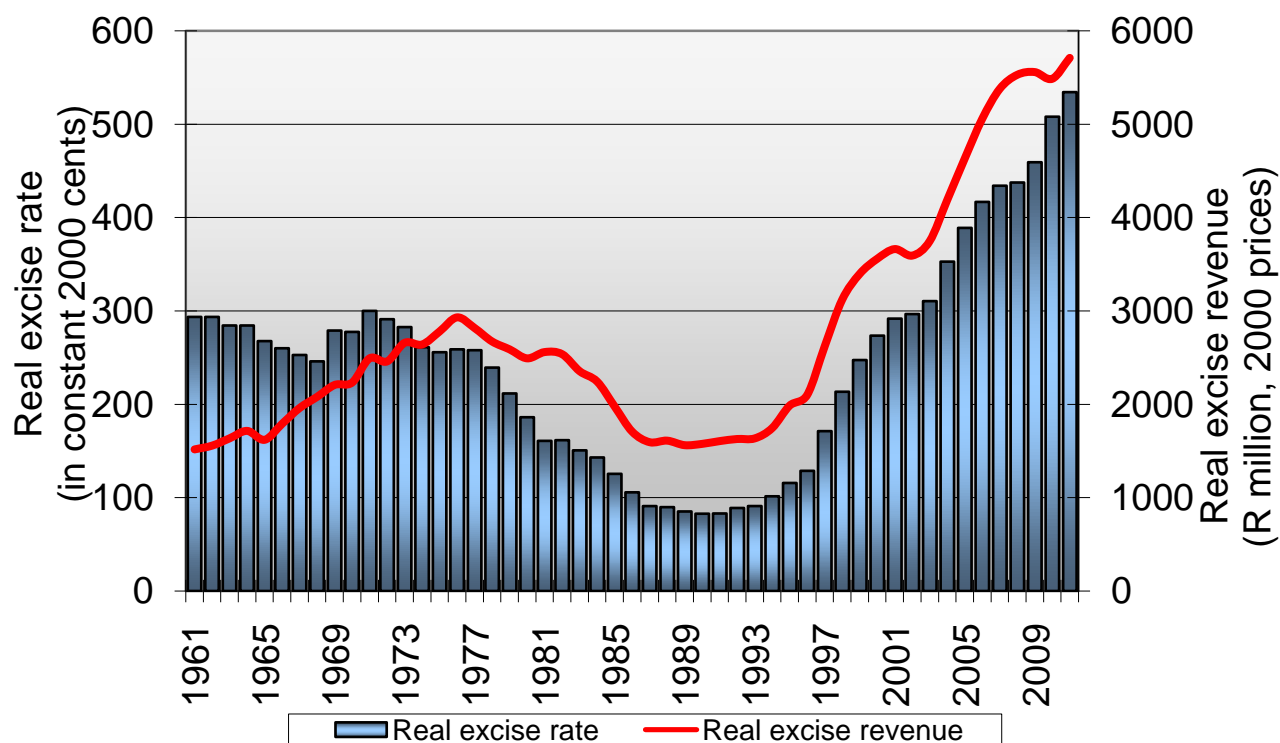


Figure 2 – *The South African Experience (real excise revenue) 1961 – 2011.*

Source: Van Walbeek C ‘South African/SACU Experience with Tobacco Taxation: Lessons Learned and Relevance for other SADC countries’ (2012), *University of Cape Town*, <https://goo.gl/sR5WTF>, 5.

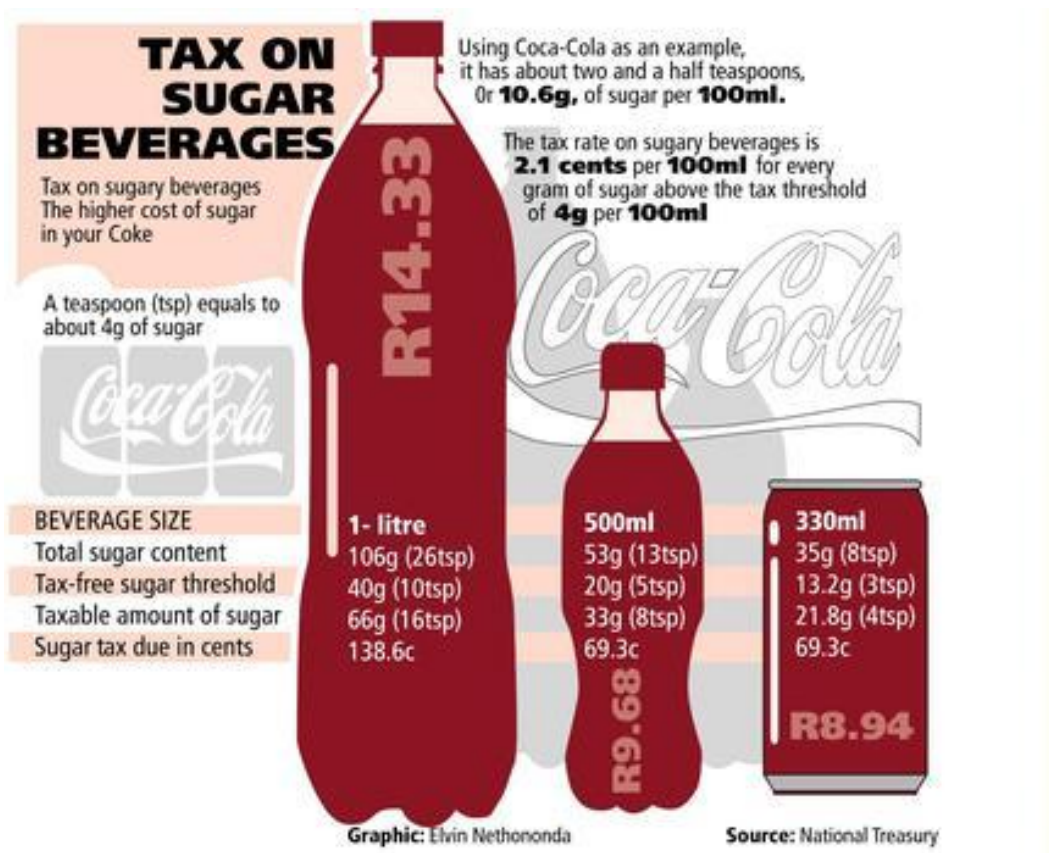


Figure 3 – The added cost of sugar contained in different size Coca-Cola beverages and the rate of SSB tax respectfully.

Source:Jansen Z ‘SA sugar war leaves a bitter taste’ (5 June 2017), *IOL*, available at <https://goo.gl/9jVXdL>, last accessed 14 November 2017.

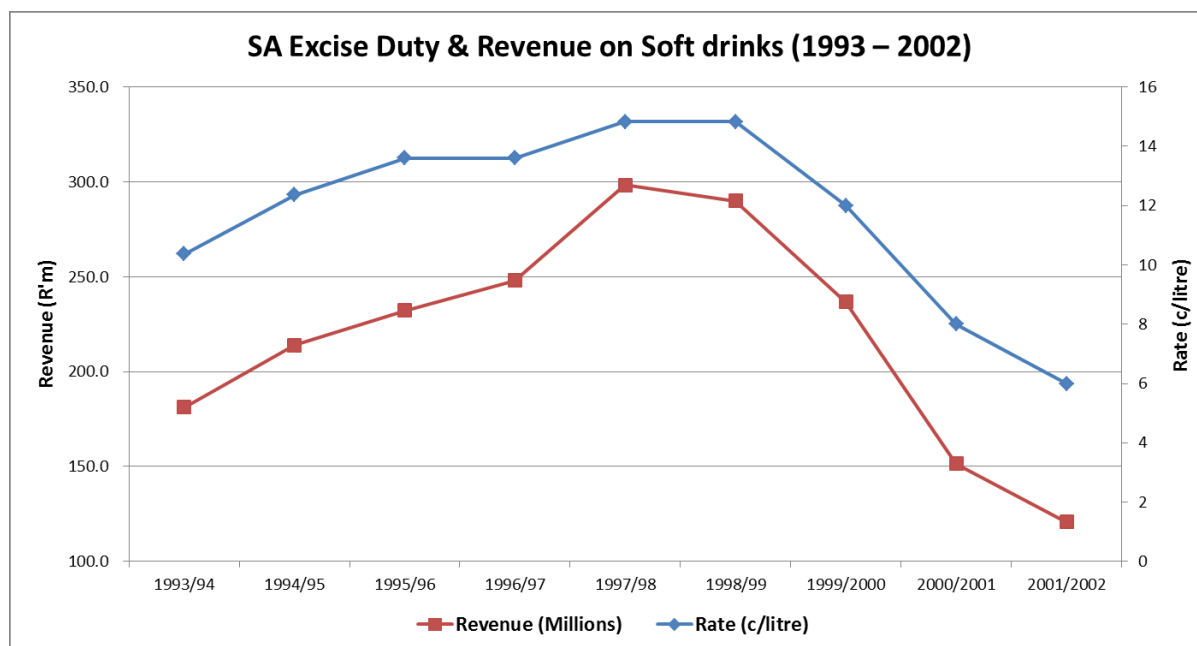


Figure 4 – A representation of the economic experience of SSB tax in South Africa between the excise duty and revenue on soft drinks (1993-2002)

Source: Legote M 'Tax on SSBs' (2016), *Public Economics winter school*, 6.

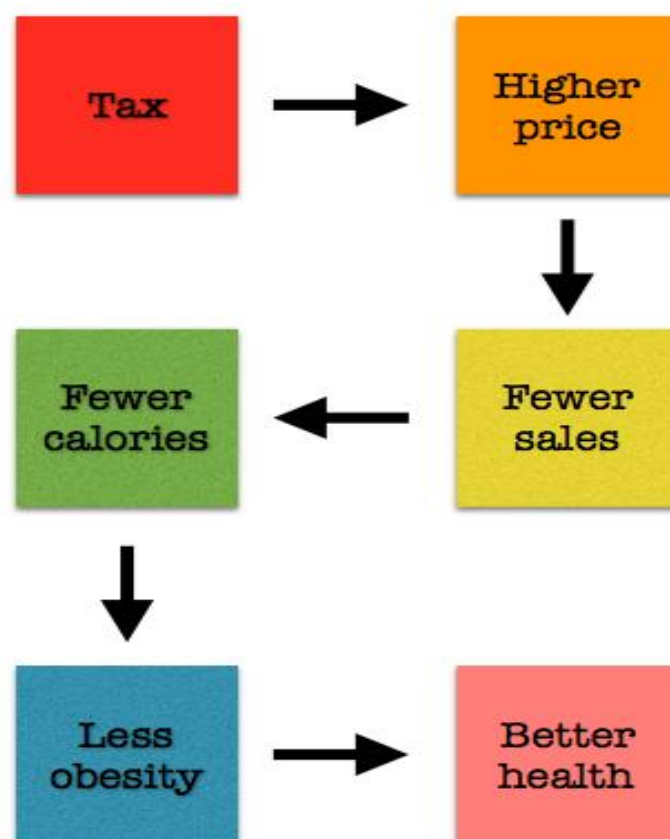


Figure 5 – The chain of events for the successful implementation of SSB tax in South Africa.
Source: Snowden C ‘Sugar Taxes: a briefing’ (2016), *The Institute of Economics*, 1, available at <https://goo.gl/NvHGa9>, 2.

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08 September 2017

Ms Orushka Ananth (211501204)
School of Law
Howard College Campus

Dear Ms Ananth,

Protocol reference number: HSS/1608/017M

Project title: Sugar-Sweetened Beverages (SSB) Tax in South Africa: An analysis of the tax design

Approval Notification – No Risk / Exempt Application

In response to your application received on 11 August 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Dr Shenuka Singh (Chair)

/ms

Cc Supervisor: Mr Christopher Schembri and Dr SJ Bosch
Cc Acting Academic Leader Research: Professor Shannon Bosch
Cc School Administrator: Mr Pradeep Ramsewak

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